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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission resolution 1997/44

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Introduction

1. The Commission on Human Rights, at its fifty-third session, in its resolution 1997/44, welcomed the report of the Special Rapporteur on violence against women, its causes and consequences (E/CN.4/1997/47 and Add.1-4) and commended the Special Rapporteur for her analysis of violence in the family and violence in the community. In the same resolution, the Commission decided that the mandate of the Special Rapporteur should be renewed for a period of three years and requested the Special Rapporteur to report annually to the Commission on Human Rights, beginning at its fifty-fourth session, on activities relating to her mandate.

2. In follow-up to her previous reports on violence against women in the family and in the community, the present report analyses various forms of violence against women as perpetrated and/or condoned by the State. 1/ The first chapter addresses violence against women in armed conflict. In chapter II, the Special Rapporteur looks at custodial violence against women. In chapter III, she examines violence against refugee and internally displaced women.

Country visits

3. The Special Rapporteur would like to draw the attention of the Commission on Human Rights to the report of her mission to Rwanda (22 to 31 October 1997) on the issue of rape and sexual violence against women in armed conflicts (E/CN.4/1998/54/Add.1). The Special Rapporteur would also like to take this opportunity to express her appreciation to the Government of Rwanda for facilitating her visit and enabling her to meet with all relevant interlocutors, both governmental and non-governmental, in the country. The Special Rapporteur regrets that her visit to Afghanistan and Pakistan, scheduled for December 1997, had to be postponed and hopes that, with the renewed indulgence of the Governments of Afghanistan and Pakistan, the Special Rapporteur will be in a position to carry out this visit in 1998.

4. Furthermore, in 1998/99, before the fifty-fifth session of the Commission, the Special Rapporteur is planning to visit the United States of America on the issue of violence against women in prisons. The Special Rapporteur also hopes to visit the Asian and Middle Eastern regions to report on violence against women and religious laws.

5. Having completed a first cycle of reports on violence against women in the family, in the community and by the State in the last three years, the Special Rapporteur envisages, in her forthcoming reports, to explore further in-depth specific aspects of domestic violence, trafficking and forced prostitution, as well as violence against women perpetrated and/or condoned by the State. Corresponding missions to countries of special concern are also envisaged.

6. As indicated in her previous report, the Special Rapporteur still intends to make brief follow-up reports to her reports on country visits. Such reports would include information on the implementation of the Special Rapporteur's recommendations, as well as new developments in the countries concerned in connection with the issues studied. In addition, information

regarding the need to carry out any follow-up missions or recommendations as to how other activities and programmes of the Office of the High Commissioner for Human Rights could assist in the follow-up would be included. Due to reasons of page limitation, such information has not been included in the present report.

Communications with Governments

7. With regard to communications concerning individual allegations of violence against women, the Special Rapporteur participated in sending joint urgent appeals and/or communications with the Special Rapporteurs on torture and on freedom of opinion and expression, as well as with the Special Rapporteur on the situation of human rights in the Sudan. The Special Rapporteur also sent a number of individual communications to Governments, but due to the delay in transmitting these cases, the replies of Governments will only be reflected in the Special Rapporteur's next report.

I. VIOLENCE AGAINST WOMEN IN TIMES OF ARMED CONFLICT

8. Violence against women during times of armed conflict has been a widespread and persistent practice over the centuries. There has been an unwritten legacy that violence against women during war is an accepted practice of conquering armies.

9. It has been posited that the military establishment is inherently masculine and misogynist, inimical to the notion of women's rights. 2/ The masculinity cults that pervade military institutions are intrinsically anti-female and therefore create a hostile environment for women. The large number of sexual harassment cases in United States military institutions is cited as an example of the misogyny within the armed forces. There exists a difference of opinion about whether women should play a role in dismantling this apparatus or whether they should enter military institutions in large numbers and fight for institutional equality. This remains an unfinished debate.

10. Laws drafted in the past few centuries have provided some measure of protection for women during armed conflict. These laws, codified as humanitarian law or the laws of war, play a significant part in the training of military personnel throughout the world. They set forth standards of individual criminal responsibility for soldiers who derogate from the standards and confer universal jurisdiction on certain international delicts. Universal jurisdiction provides all countries jurisdiction to arrest, prosecute and punish the alleged perpetrator of certain crimes. The codification of the laws of war through the Geneva Conventions was a direct result of the Second World War.

11. Until recently, violence against women in armed conflict has been couched in terms of "protection" and "honour". Article 27 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War treats violence against women as a crime of honour rather than as a crime of violence. By using the honour paradigm, linked as it is to concepts of chastity, purity and virginity, stereotypical concepts of femininity have been formally enshrined in humanitarian law. Thus, criminal sexual assault, in

both national and international law, is linked to the morality of the victim. When rape is perceived as a crime against honour or morality, shame commonly ensues for the victim, who is often viewed by the community as "dirty" or "spoiled". Consequently, many women will neither report nor discuss the violence that has been perpetrated against them. The nature of rape and the silence that tends to surround it makes it a particularly difficult human rights violation to investigate.

12. Perhaps more than the honour of the victim, it is the perceived honour of the enemy that is targeted in the perpetration of sexual violence against women; it is seen and often experienced as a means of humiliating the opposition. Sexual violence against women is meant to demonstrate victory over the men of the other group who have failed to protect their women. It is a message of castration and emasculation of the enemy group. It is a battle among men fought over the bodies of women.

13. Rape is used by both sides as a symbolic act. As depicted by Second World War posters in which the rape of a woman was used to evoke the image of the "rape" of France, rape is used by one side to demoralize the other. The rape of "their" women is then used to increase the sentiments against the enemy and further demonize them. This process of demonization or dehumanization may, in turn, lead to more rapes. Rape during warfare has also been used to terrorize populations and induce civilians to flee their homes and villages. It is often seen as one of the "perks" for soldiers and an inducement to display courage on the battlefield - in other words, as a natural consequence of war. The alleged endemic nature of rape in war has been institutionalized by militaries through forced prostitution and military sexual slavery. Such practices have been justified as a mechanism to avoid the rape of innocent civilians.

14. The consequences of sexual violence are physically, emotionally and psychologically devastating for women victims. Few countries have adequately trained personnel to meet the needs of victim-survivors. Additionally, in some situations, forced impregnation has likewise been used as a weapon of war to further humiliate the rape victim, by forcing her to bear children of the perpetrator. Some rape survivors have given birth to the unwanted children of rape. Likewise, some survivors have been forced into the role of sole head of the household with little earning power. All these problems have been invisible in the past, but in the last few decades, important momentum has been generated as new norms are created to address sexual violence during armed conflict.

15. The 1949 Geneva Conventions were promulgated in reaction to international armed conflict and world wars and thus were primarily designed to set standards applicable during times of international armed conflict. Contemporary forms of warfare are not traditionally international in character. Rather, they are being fought within Nation States, generally between States and guerrilla movements. Common article 3 of and Protocol II to the Geneva Conventions apply humanitarian legal standards to internal armed conflicts.

16. Increasingly, non-State actors such as paramilitary troops and guerilla organizations are becoming important actors in the internal affairs of States.

The role of non-State actors poses challenges under international law, which was conceptualized to govern States and their actors and agents. The Velásquez decision of the Inter-American Court of Human Rights 3/ sets forth the standard of State responsibility for non-State, paramilitary operatives. The State is under a due diligence standard to prevent, prosecute and punish offenders who violate the rights of others, whether they are acting as official agents of the State or as paramilitaries. The same standard has been interpreted to extend to other non-State actors, thereby providing a mechanism of State accountability for the prevention, prosecution and punishment of private violations of human rights.

17. What is less clear under international law is the means by which to hold non-State actors accountable for the human rights violations they commit. The Special Rapporteur, however, agrees with international human rights experts that non-State actors conducting war are likewise bound by common article 3. Thus, non-State actors contesting State power must respect international humanitarian law. Individual criminal responsibility and universal jurisdiction also apply to individuals waging war against the State. Since women are often the victims of violence perpetrated by non-State actors during armed conflict, for example forced marriages by non-State actors in Algeria and in Kashmir, it is imperative that the international community evolve unequivocal standards which ensure human rights protection to victims who live in areas not under the control of formal State authorities.

18. Increasingly, women are entering the ranks of the combatants and, for the first time in history, women are being charged with war crimes. Women, for example, were active participants in the genocide in Rwanda, some of whom perpetrated sexual violence against other women. In Peru and Sri Lanka, women combatants are increasingly playing a role in the front lines of battle. The Geneva Conventions framed their standards in terms of male soldiers and combatants. Such standards need to be reformulated to take into account the needs of women prisoners of war and the challenges of women war criminals.

A. Cases of violence against women in times of armed conflict

19. The following are cases of violence against women during times of armed conflict as reported by independent fact finders; their stories have been corroborated by more than one source. The list is neither exhaustive nor representative, but it serves to point to the nature and degree of violence perpetrated against women during times of armed conflict. Some of the case studies were given to the Special Rapporteur in direct testimony, others are drawn from the reporting of international human rights non-governmental organizations, such as Amnesty International and Human Rights Watch.

Afghanistan

20. Taliban edicts have placed a virtual ban on women in the public sphere. This has had a devastating impact on the health-care system in Kabul. As female nurses form the backbone of the health system, their inability to work has seriously impaired the capacity of health services. Nurses who have gone to help patients have been repeatedly beaten by the Taliban guards. On 30 October 1997, the Taliban official in charge of the security area, reportedly a 17 year-old youth, came to the hospital. Upon seeing that two

nurses were not wearing burqas but were only covered with scarves and long coats, he became very angry and dragged the two women to a nearby tree and

began beating them with a branch. When one tried to run away, he forced her onto the ground and held her in between his feet while beating her with a stick. 4/

21. Though the Taliban in Afghanistan have taken the denial of human rights of women to new lows, laying down rule after rule denying women their basic human rights, all warring factions in Afghanistan are responsible for violations of women's human rights. The international community has yet to take concerted action to ensure the protection of women's rights in Afghanistan. If, as it is alleged, members of the international community have provided support to the warring factions, it then has a duty to ensure that women's rights are protected by those factions that receive foreign assistance.

Algeria

22. In March 1994, a faction called the Armed Islamic Group issued a statement classifying all unveiled women who appear in public as potential military targets. To punctuate this threat, gunmen on a motorbike shot and killed two unveiled high school female students who were standing at the bus station waiting to go home. 5/

23. The Algerian civil war is perhaps the most violent conflict in the world today. Although both men and women are targets, and both sides are guilty of human rights violations, the armed Islamic opposition reserve particularly harsh treatment for women who do not conform to their strict dictates, including unveiled women, professional women, and independent, single women living alone. They also engage in forced marriages and other forms of abduction of women living in areas under their control. As non-State actors during armed conflict, they are nonetheless governed by humanitarian law.

Bosnia and Herzegovina: the case of B.

24. "It began as soon as I arrived. During the day we stayed in a big sports hall. The guards were always there. If they caught us talking they would take a woman out, beat her and more than the usual number of men would rape her. They liked to punish us. They would ask women whether they had male relatives in the city. I saw them ask this of one woman, and they brought her 14 year-old son and forced him to rape her. Some of us were selected by name and some were just chosen. If a man could not rape (i.e. he was physically unable) he would use a bottle or a gun or he would urinate on me. Some of the local Serbs wore stockings on their heads to disguise their faces because they did not want to be recognized. [Nevertheless] I recognized many of them. They were colleagues - doctors with whom I worked. The first [man] who raped me was a Serbian doctor named Jodic. I had known Jodic for ten years." 6/

25. Despite the widespread nature of these abuses and the many indictments that have been filed, no one has yet been convicted of sexual assault by the International Tribunal on the Former Yugoslavia. The slow pace of the Tribunal has caused frustration within the international community.

Indonesia: the words of Dom Martinho, former Bishop of Dili, East Timor

26. "People came all the time to tell me in secret, to clear their conscience of the things they were forced to do or see. They come to tell it, women too, even young girls. One young girl was put in a tank of water with a Timorese man and soldiers forced them to have sex in front of the soldiers in the tank of water ... they seemed to have no moral sense, no humanity. One of their favourite customs was to rape wives in front of their husbands, right there, sometimes with the children there too." 7/

27. The Special Rapporteur has received a large number of submissions regarding sexual violence in East Timor by Indonesian security forces. Among the violations complained of are sexual violence, rape, forced marriage, forced prostitution and the intimidation of female relatives of suspected activists. Indonesian State authorities have not responded in accordance with their international obligations. No cases have thus far resulted in prosecution.

Guatemala

28. In 1996, Vilma C. Gonsalves, a trade union leader, received death threats and was abducted. She was raped and suffered other physical injuries perpetrated by men who were heavily armed. In February 1996, she received a letter saying "whore we give you 48 hours to leave the country". On the same day she was abducted. 8/

29. Although the Peace Agreement was signed on 29 December 1996 between the Government of Guatemala and the National Revolutionary Unit, isolated incidents of violence against women still persist.

Haiti

30. "The men entered the room where S., my husband's other child, and my cousin were sleeping. My cousin was seventeen and they tried to rape her but they realized that she had her period and left her alone ... . One of the armed civilians put a gun across my cousin's legs and molested her. He put his hands under her gown and felt her breasts and rubbed his hands over her stomach and her thighs. After this, the soldiers ransacked the house and stole their provisions. Two of the men were in uniform and one other, who was a local policeman, was dressed in civvies." 9/

31. Despite the return of the popularly elected leadership in 1994, very little has been done to break the impunity enjoyed by the armed forces in Haiti.

India: the case of Devki Rani (Punjab)

32. "My legs were stretched apart and hands tied behind in the police post. The SI (Sub-Inspector) climbed on my thighs. I was tortured and molested by the ASI (Assistant Sub-Inspector), the Head Constable and two other men. My head was dipped in the water several times. My son Rajesh Kumar was compelled to disrobe me. I was kept in wrongful confinement for three days." 10/

33. After a petition was filed in the High Court by an international human rights organization, a trial has been initiated and is currently under way.

34. In the village of Kunan Poshpor, Kashmir, a large number of women have claimed to have been raped by soldiers of the Rajputana Rifles. Human rights activists claim that the case was not properly investigated. The Government called on the non-government press council to undertake an independent investigation and they called the charges "baseless". International NGOs in their fact-finding missions claim that the investigation was not properly conducted and that the authorities have been more concerned with shielding the government forces than investigating the charges of rape. 11/

35. Although India has a strong legal framework for prosecuting cases of rape by security forces, including provisions relating to custodial rape that provide victim-friendly evidentiary procedures, neither investigation nor prosecution by State authorities has been adequately pursued, thus suggesting a lack of political will to prevent, prosecute and punish such violations of women's human rights.

36. The counter-violence by armed opposition groups in Jammu and Kashmir is equally condemnable as being in violation of human rights standards. In particular, the Special Rapporteur calls attention to allegations of "forced marriages" by which unmarried women are abducted, raped by and then forced to become the brides of members of the armed opposition. Such violations constitute wartime sexual slavery as well as rape and torture.

Japan: the case of Chong, a former "comfort woman" during the Second World War

37. "One day in June, at the age of 13, I had to prepare lunch for my parents who were working in the field and so I went to the village well to fetch water. A Japanese soldier surprised me there and took me away ... . I was taken to the police station in a truck where I was raped by several policemen. When I shouted, they put socks in my mouth and continued to rape me. The head of the police station hit me on the left eye because I was crying. I lost eyesight in the left eye. After ten days or so I was taken to the Japanese army garrison ... . There were around 400 other Korean young girls with me and we had to serve over 5,000 Japanese soldiers as sex slaves every day. Each time I protested, they hit me or stuffed rags in my mouth. One held a matchstick to my private part until I obeyed him. My private parts were oozing with blood." 12/

38. The Government of Japan has made some welcome efforts at dealing with the problems of past violence to "comfort women". The Government of Japan and successive Japanese prime ministers have expressed remorse and have apologized to former "comfort women". A private fund called the Asian Women's Fund has been set up to assist individual victims with a grant of 2 million yen each. As of this writing, over 100 victims have applied to receive funds and about 50 would have actually received atonement money. The Fund also attempts to help elderly women in countries in which there exist former "comfort women", but where cultural restraints prevent women from coming forward. The Government has set aside 700 million yen from the national budget for medical and welfare projects of the Asian Women's Fund. It has also made a commitment

to raise awareness and to include reference to these tragedies in textbooks so that such practices do not emerge in the future. However, the Government of Japan has not accepted legal responsibility. Perhaps it is waiting for decisions of the six court cases filed with Japanese courts.

Liberia

39. A survey of 20 women and girls over the age of 15 years was conducted in Monrovia and its environs in 1994, nearly five years after civil conflict broke out in Liberia. 13/ At the time the survey was conducted, the capital city had over 500,000 people living in it. The surveys were conducted by Liberian health workers in four types of setting: high schools, markets, displaced persons camps, and urban communities in Monrovia. Interviewees were randomly selected at these sites.

40. The survey was conducted to find out how common it was for women who were living in Monrovia to have experienced violence, rape, and sexual coercion from soldiers or fighters since the war began in 1989. Sexual coercion was defined as being forced into a relationship with a combatant because of war time conditions, e.g. in order to feed oneself or one's family, to get shelter or clothing, or for protection and safety.

41. Nearly half (49 per cent) of the 205 women and girls surveyed experienced at least one type of physical or sexual violence. Soldiers or fighters beat, tied up or detained (locked in a room and kept under armed guard) one in every six of the women and girls (17 per cent). They strip-searched nearly one third of the women and girls (32 per cent) one or more times. They raped, attempted to rape, or sexually coerced more than one in every seven (15 per cent). In addition, a large percentage of the women and girls (42 per cent) witnessed a soldier killing or raping someone else.

42. In the Liberian civil conflict, nearly half the women and girls in the survey were subjected to at least one act of physical or sexual violence by soldiers and fighters during the first five years of the war. Being accused of belonging to a particular ethnic group or fighting faction was a significant risk factor for physical violence and attempted rape. Women who were aged 20 or older when the war began were at risk of being tied up or strip-searched. Young women and women who were forced to cook for soldiers or fighters were particularly at risk of sexual violence.

43. In the beginning of the Liberian civil conflict, the government army and fighting factions were divided primarily along ethnic lines. It was common for civilians, when confronted by a soldier or fighter, to be forced to identify their ethnic group by speaking their ethnic language. In the survey, those women who were confronted by a soldier or fighter and accused of belonging to an enemy ethnic group or fighting faction were more likely to experience violence. The sample did not include significant numbers from the main ethnic groups involved in the early fighting. Although the data did not reveal whether women of those ethnic groups were at greater risk than other ethnic groups, it was clear that violence against women affected all of the 15 ethnic groups in the sample.

44. When fighters took control of a village, sometimes a fighter would force a woman from the village to cook for him. When women crossed checkpoints, sometimes a fighter would take a woman from the checkpoint and force her to cook for him. Women reported that being forced to cook for a soldier meant that she was subjected to his control in a variety of ways: more than half of the women who were forced to cook experienced sexual violence.

Mexico

45. Paula Galeana Balanzar, Alba E. Hurtado, and Rocio Mesino Mesino have been receiving death threats for their activities. In June 1995, State security forces killed 17 peasants in Aguas Blancas who were demonstrating for the release of a fellow villager. These women, village organizers, were witnesses. Since then they have been continually harassed. 14/

46. The southern Mexican States of Chiapas and Guerrero have been in a state internal armed conflict in recent times. Human rights groups have chronicled human rights violations, including violence against women.

China: Tibet

47. A 20-year-old nun who was serving a five-year sentence after having participated in a demonstration in 1992 was beaten along with other imprisoned nuns by prison guards after they sang nationalist songs. The prison medical staff then gave her medication which left her unconscious. Later, she was diagnosed with tuberculoma which caused her subsequent death. Even though the death occurred in custody, the Chinese authorities did not investigate her death. 15/

Peru: the case of Iris

48. "They forced me against my will to take off my clothes and then pushed my head down, and then every officer who passed stuck his hand inside my vagina, then they took one of my earrings and punctured my bottom with it, and then placed a barrel of a machine gun in my anus, then pulled me up, just like that, naked with my face blindfolded." 16/

49. Rape has been used by both sides to the conflict in Peru as an instrument of war. Women have been threatened, raped and murdered by government security forces and by the Shining Path guerrillas. There is little national redress for women victims of sexual violence and thus some cases have been filed before the Inter-American Court of Human Rights. A recent decision of the Inter-American Court found that Maria Elena Loayza had been arbitrarily detained, tortured and raped by Peru's security forces and so ordered her release. On 2 October 1997, the Peruvian Government released the university teacher, who had been imprisoned since 1993.

Rwanda: the case of Emma 17/

50. Emma, a Tutsi, was married to a Hutu after her father was killed in 1964 for being a spy. The marriage did not work and she returned home to live with her mother, bringing along her five children. During the genocide, her husband came and took away the children and she went off to the forest. The

rest of the family stayed behind. The Interahamwe tried to force her mother to have sex with her son. When she refused, they broke all her teeth and killed her. Two sisters were raped and were asked to dig their own graves. They were both killed by machetes. Emma and another sister went to the commune in Tabaa hoping to receive protection from the State. She was proved very wrong. First the authorities separated the intellectual Tutsis from the rest and killed them. Emma and the others had to dig the graves. Then the raping began. She was raped by about 15 men on the premises of the commune. She could hardly move or keep her legs together. She fled into the forest with her sister. Again a group of Interahamwe found her and she and her sister were raped. Her sister was killed after being raped. The perpetrator who killed her sister lives free in Tabaa.

51. Emma fled toward Zaire but at the military barrier she was raped again - the soldier said he wanted to "taste a Tutsi" - and she was beaten on her genitalia. By that time she had puss coming out of her internal wounds and she was terribly ill. She disappeared into the forest again and wandered, eating grass and berries. Finally the Rwandan Patriotic Front came into her region and she was taken to the hospital. She and her aunt are the only survivors of the genocide from her family.

52. Despite the widespread occurrence of rape, the International Criminal Tribunal for Rwanda initially failed to include the charge of rape in indictments. Only in August 1997, after a concerted international effort by women's non-governmental organizations, did the prosecutor begin charging perpetrators with sexual violence. Nonetheless, only two perpetrators have been charged with rape. Only recently, at the national level, has the Government begun charging individuals with sexual violence during the genocide. According to the Genocide Act in Rwanda, sexual violence is a category-one crime which makes perpetrators eligible for the death penalty.

Sri Lanka

53. On 7 September 1996, Krishanthi Kumaraswamy was returning home in Kaithadi, Jaffna, after taking an examination when, according to witnesses, she was last seen at the Chemmuni checkpoint on the Kandy Jaffna Road. When she did not return, her mother, her brother and a neighbour went in search of her. They too disappeared. After a month of urgent appeals, the President intervened. Four bodies were finally exhumed and confirmed to be those of Krishanthi, her mother, brother and the neighbour. Allegedly, Krishanthi was gang-raped before she was murdered.

54. Eleven members of the security forces were arrested, two of whom were released after turning State's witness. In response to the national and international pressure, the case has been given priority and is currently being presented before a trial at bar, only the fourth trial at bar in the history of Sri Lanka. A trial at bar is heard by a panel of judges in the High Court, bypassing initial proceedings in the magistrate court. At the time of this writing, the prosecution was in the process of presenting its evidence. Though the Government was quick to act in this case, other rape cases have not received the same attention. The case of Koneswary Murugesupillai is a case in point. Ms. Murugesupillai, a mother of four from

Central Camp village, was allegedly gang-raped and then murdered when a grenade was exploded on her abdomen by Sri Lankan police in May 1997. As of this writing, there has been no response by the Government. 18/

55. Abuses by the opposition group, the Liberation Tigers of Tamil Eelam, have been likewise documented. Specifically, women civilians have been among those who have been murdered and mutilated in attacks on Sinhala border villages in the east of the country and in bombings of crowded areas in the north-east and in Colombo.

United States of America: the case of Yoon Keum E.

56. Kenneth Markle, a private in the United States Army stationed in the Republic of Korea, battered Yoon Keum E. to death with a coke bottle and then stuffed it into her vagina, and shoved an umbrella into her anus. In order to eliminate evidence of her murder, he spread soap powder over her body. Lastly he stuffed matches into her mouth. 19/

57. The Korean Supreme Court sentenced Private Markle to 15 years' imprisonment. Abuses committed by foreign military personnel, including United Nations peacekeeping forces, have raised some important issues. Questions arise as to which courts should try them and whether humanitarian law applies. There is a need for the international community to deal with this issue in a more systematic manner, especially if there continues to be a need for international peacekeepers.

B. The legal framework

58. Since classical times there have been codes of war aimed at disciplining soldiers for illegal conduct in the field. Traditionally, rape did not constitute such conduct since women were, and in many cultural contexts still are, considered to be the property of their husbands and rape was viewed as a crime of honour. By the late Middle Ages, however, notions of non-combatant immunity and the classification of rape in wartime as illegal had begun.

59. Today, the framework for the protection of women from sexual violence during armed conflict is based on international humanitarian law, which includes treaty law, customary international law, and the practice of international war crime tribunals. The first conventions of modern times to regulate warfare were the Hague Conventions of 1907. Article 46 of the Regulations Respecting the Laws and Customs of War on Land Annexed to Hague Convention No. IV of 1907 states that "family honour and rights ... must be respected" by warring parties. According to judicial interpretation, the Hague Convention had become part of customary international law by 1907 and warring parties after that time were bound by the spirit of the Convention. 20/

60. Today, the 1949 Geneva Conventions, however, constitute the primary framework governing international humanitarian law. According to article 27 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), "[w]omen shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault".

61. Although the Geneva Conventions primarily relate to international armed conflict, article 3 common to all the Conventions protects the rights of individuals in internal conflicts. According to common Article 3,

> "the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
>
> "(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
>
> "(b) taking of hostages;
>
> "(c) outrages upon personal dignity, in particular humiliating and degrading treatment.

62. The International Court of Justice, in Nicaragua v. USA, 21/ held that common article 3 is an accepted part of customary international law in addition to being a treaty provision and thus binds all parties to a conflict, whether State or non-State actors, irrespective of whether they are a party to the Geneva Conventions.

63. Grave breaches of the Fourth Geneva Convention are enumerated in article 147. Anyone who commits a grave breach is subject to individual criminal liability and universal jurisdiction, by which any one of the High Contracting Parties can prosecute the crime. According to article 147, grave breaches include:

> "wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly".

64. Although neither common article 3 nor grave breaches enumerated in article 147 include sexual violence per se, recent indictments before the International Criminal Tribunal for the Former Yugoslavia (ICTY) have defined sexual violence as torture, inhuman punishment, great suffering or serious injury. In addition, the International Committee of the Red Cross, in its aide-mémoire 3 of December 1992, declared that the article 147 provisions on grave breaches included rape. This expansive interpretation has allowed for the prosecution of individuals for sexual violence as a grave breach of international humanitarian law also under common article 3.

65. In 1977, two additional protocols were added to the Geneva Conventions. In the second Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution, and any form of indecent assault" are proscribed. The first Protocol Additional to the Geneva

Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) has a similar provision.

66. In addition to the Geneva Conventions, other areas of human rights law prohibit violence against women, including sexual violence. For example, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines "torture", in its article 1, as:

> "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him [or her] or a third person information or a confession, punishing him [or her] for an act he [or she] or a third person is suspected of having committed, or intimidating or coercing him [or her] or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

67. Although rape has not always been clearly defined as torture, increasingly it is being recognized as such. As early as 1992, the Special Rapporteur on torture clearly defined rape as a form of torture. The prosecutors at both the ICTY in The Hague and the International Criminal Tribunal on Rwanda (ICTR) in Arusha have indicted individuals for rape as a form of torture. Furthermore, a recent decision by the European Court of Human Rights in the case of Aydin v. Turkey of 25 September 1997 found that the:

> "[r]ape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victims which do not respond to the passage of time as quickly as other forms of physical and mental violence ... the Court is satisfied that the accumulation of acts of physical and mental violence inflicted on the applicant and the especially cruel act of rape to which she was subjected amounted to torture in breach of article 3 of the Convention".

68. In addition to the Torture Convention, the Convention on the Prevention and Punishment of the Crime of Genocide, the Slavery Convention, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women are other human rights instruments which have a bearing on the concept of sexual violence during times of armed conflict.

C. Application of the framework

69. Unlike many other areas of international law, international humanitarian law has been interpreted by international tribunals specifically established to address the question of criminal acts during armed conflict. The International Military Tribunal at Nürnberg (Nürnberg Tribunal), the International Tribunal for the Far East (Tokyo Tribunal), the International

Criminal Tribunal for Rwanda at Arusha and the International Criminal Tribunal for the Former Yugoslavia at The Hague are four international tribunals that have been set up to deal with the issue of individual criminal liability for cases of war crimes, grave breaches and crimes against humanity. The Nürnberg Tribunal was the first to be established. The offences were divided into "crimes against peace", "war crimes" and "crimes against humanity". Rape was not included in any of the descriptions and no one at Nürnberg was tried for sexual violence.

70. The term "crimes against humanity" was developed at the Nürnberg Tribunal to provide a mechanism by which to try political leaders of the Axis countries whose policies had promoted or led to the perpetration of war crimes. And yet, the section which was utilized for prosecutions was the section on war crimes, which finds its parallel in the grave breaches section of the subsequent Fourth Geneva Convention. Crimes against humanity were an important addition to the list of international delicts, particularly since they may be committed during times of peace, as well as times of war. The victims must be civilians, but the perpetrators may also be civilians. The crimes, however, must be widespread and systematic, coupled with persecution on political, racial or religious grounds. Thus far, gender has not been included as an independent basis of persecution. However, crimes against humanity could be interpreted in light of developing norms of refugee law, in which gender is increasingly being recognized as a distinct basis of persecution.

71. Although the Nürnberg Statute did not include rape as a crime, the occupying powers in Germany listed rape as a crime against humanity under Control Council Rule No. 10. However, no one was prosecuted under this provision. At the Tokyo Tribunal the situation was somewhat different. The "Rape of Nanking" illustrated that rape was a violation of the recognized customs and conventions of war. The Japanese commanders Hiroto and Toyoda were indicted and convicted on such grounds.

72. Fifty years later, the United Nations Security Council established two ad hoc international tribunals for the prosecution of war crimes committed in the territories of the former Yugoslavia and in Rwanda. For the first time in history, rape during wartime has been explicitly included as a crime against humanity. Unfortunately, despite the widespread nature of these crimes, rape was not included in the relevant sections on war crimes or grave breaches in the respective statutes. Nonetheless, the Office of the Prosecutor (OTP) has charged specific defendants with sexual violence as a war crime, a crime against humanity, genocide, enslavement, a grave breach and enforced prostitution. The creativity demonstrated by the OTP in its promotion of social justice must be commended*. However, in recent times there appears to be less interest in charging defendants with sexual violence. Additionally, the Tribunals have yet to set forth their decisions on these issues.

73. The OTP has brought rape charges in 6 of the 20 public indictments of the ICTY and in 2 of the ICTR public indictments. Other types of sexual

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* Note that the ICTY and the ICTR share the same Prosecutor, with the Office of the Prosecutor at The Hague and an Office in Kigali, headed by the Deputy Prosecutor.

violence, including assault and mutilation, have also been charged by both the ICTY and the ICTR. This is the first time in history that such specific charges of sexual violence have been brought before international tribunals. Notably, each defendant has generally been charged with more than one count.

74. The OTP has charged defendants with rape as a war crime under common article 3 even though rape is not explicitly mentioned therein. Instead, "torture" has been interpreted to include rape, especially in cases of multiple or repetitive instances of rape causing serious bodily harm or suffering. Under common article 3, rape has also been charged in isolated instances of rape and other instances of sexual assault and sexual mutilation as "cruel treatment", an "outrage upon human dignity" and "humiliating and degrading treatment".

75. Besides charging defendants under common article 3, the Office of the Prosecutor has also charged defendants with grave breaches of the Geneva Conventions. Again, defendants who have committed sexual violence have been charged with "torture", in cases of multiple and repetitive instances of rape causing serious bodily harm or suffering. In cases of isolated instances of rape and other forms of sexual assault they have been charged with "wilfully causing great suffering or serious injury to body or health". In situations where there is no serious physical injury, they have been charged with "inhuman treatment".

76. In addition to common article 3 and the section on grave breaches, the OTP has also charged rape as a crime against humanity, both as a specifically proscribed act and as "torture" and "enslavement". The introduction of sexual violence as enslavement constitutes an important contribution to international law by the OTP. The Foca indictment included a charge of enslavement, a crime against humanity, for a situation in which women were detained against their will and forced for several months to provide sexual and household services for persons. The OTP argued that this constituted a slavery-like practice encompassed within the term "enslavement".

77. The OTP has also charged rape as a genocidal act in indictments at both the ICTY and the ICTR. The charge of genocide has been used against superior authorities in the chain of command. This is a welcome innovation of the OTP. They appear to have received support from the Trial Chamber when it suggested in the Foca indictment that forced pregnancy may be evidence of "genocidal intent" even though this is not specifically spelled out in the Genocide Convention. There is a clear link between sexual violence, forced impregnation and genocide. The OTP must be congratulated for recognizing this and pushing the bounds of international law.

78. In addition to innovative charging, the Office of the Prosecutor is assisted by victim-friendly statutes and rules of procedure. The centrepiece in terms of women's rights is rule 96 of the rules of procedure and evidence (IT/32/Rev.3/Corr.1 of 6 February 1995) of the ICTY and a similar rule in the ICTR which sets forth evidentiary procedure for cases of sexual assault. According to rule 96 on sexual assault:

> "In cases of sexual assault:

"(i) No corroboration of the victim's testimony shall be required.

"(ii) Consent shall not be allowed as a defence if the victim:

(a) Has been subjected to or threatened with or has reason to fear violence, duress, detention or psychological oppression; or

(b) Reasonably believes that if the victim did not submit, another might be so subjected, threatened or put in fear.

"(iii) Before evidence of the victim's consent is admitted the accused shall satisfy the Trial Chamber in camera that the evidence is relevant and credible.

"(iv) Prior sexual conduct of the victim shall not be admitted in evidence."

79. Rules 69 and 75 of the rules of procedure and evidence, which provide for the protection of both victims and witnesses, are also extremely important for the prosecution of sexual assault cases. Witness protection appears to be a central problem facing the Tribunals in cases of sexual assault. Victims and witnesses do not come forward to testify because they are frightened by the threat of reprisals. The lack of witness protection in Rwanda is a key reason why women are not coming forward to make formal complaints.

80. Victim protection programmes must include a mechanism for ensuring the protection of testifying witnesses. One way to accomplish this is through the provision for witness incognito, which has been used in certain contexts such as prosecutions for organized crime. Witness incognito would be particularly useful in situations where the perpetrators have not been arrested.

81. In an amicus curiae brief addressed to the ICTY, it is argued that the ICTY "should give every attention, on the merits of each individual case, to preserving the anonymity of witnesses for as long as possible throughout the criminal process". 22/ The argument against schemes for witness incognito in trial proceedings is that it denies the defendant the right to face and cross-examine his accusers. Additionally, in some national contexts, witness incognito has been used as a tool of State oppression against human rights activists.

82. In other contexts, however, the interests of fairness and the administration of justice may require certain innovative procedures. There are two types of witness protection programmes. The first is the non-disclosure of the identity of the victim to the public, which is being used in the case against Akayesu before the ICTR. In that context, the Tribunal appears willing to prohibit disclosure and, in some cases, allow for closed-circuit television so that the victim need not see the accused. The second form of witness protection requires an absolute prohibition on the identification of the witness to the accused. Given the reality of the wars in the former Yugoslavia and Rwanda, such a measure could serve as an incentive for victims to come forward.

83. Despite the innovations undertaken by the Office of the Prosecutor, developments have not always gone far enough. On two occasions, amicus curiae

of legal academics have been the only method to force the OTP to take note of sexual violence. In Rwanda, there were no indictments for sexual violence until an amicus curiae from legal academics and practitioners pointed out the extent of available evidence to support the charge. To the credit of the Prosecutor's Office, it amended the indictments in August 1997 to include indictments on rape and sexual assault. In the face of the large number of sexual violence cases during the genocide, the Special Rapporteur urges the ICTR to take a more pro-active stance on the issue of sexual violence.

84. The indictments are a first step in the process of fighting impunity. Ultimately, however, the Trial Chambers determine whether these charges will stand. However, dicta from the three-member Trial Chambers at the ICTY indicate that the courts are responsive to prosecuting sexual violence. Such dicta include statements extending rape charges to include non-custodial situations; affirming that sexual violence may be an element of genocide and that forced impregnation may be evidence of genocidal intent; reaffirming the inadequacy of the chain of command and the responsibility of officers and political leaders for the conduct of their men; and defining rape as a form of torture.

85. The process of drafting the statute for the proposed International Criminal Court (ICC) is paralleling the processes in The Hague and Arusha. Thus far, however, the legal innovations of the two Tribunals specifically regarding violence against women have not adequately informed the drafting process. Much of the gender-specific language remains bracketed and, thus, contentious. The Special Rapporteur is particularly concerned with the definitions of crimes. It is imperative that the statute goes beyond merely replicating the outdated provisions of the Geneva Conventions and explicitly includes sexual violence, forced prostitution, forced impregnation and rape in the sections defining war crimes, genocide and crimes against humanity. In addition, the rules of procedure must be designed to be victim-friendly. Rules of procedure, such as rule 96 of the ICTY rules of procedure and evidence, should be incorporated as part of the evidentiary procedures of the ICC.

86. The creation of a gender-sensitive International Criminal Court would be a welcome and timely development in international human rights and humanitarian law. By providing an enforcement mechanism for human rights and humanitarian law, the ICC has the potential to serve as an important tool for combating impunity by affording redress to victims and their families and countering the failures of national systems, which are often most acute in times of armed conflict. It also has the potential to remedy the inequities inherent in a system of ad hoc tribunals, such as the ICTY and the ICTR, as well as serve as a model criminal court for criminal courts within national jurisdictions. However, if it fails to explicitly incorporate developing standards relating to sexual violence against women, it could in fact serve as a legal setback.

87. The Special Rapporteur is also concerned that the trigger mechanisms for the initiation of prosecutions must be non-political. Reliance on the Security Council and its determination that prosecution would not interfere with international peace and security would politicize the criminal court and

make it selective and biased in its application. The implicit notion that impunity for core crimes is "negotiable" is unacceptable.

88. Victims as well as non-governmental organizations working in the field should be given the opportunity to trigger investigations along with an independent and powerful prosecutor's office. The independence of the prosecutor is absolutely essential if the ICC is to develop into an effective international mechanism. In order for it to adequately address violence against women, the prosecutor's office must have a legal adviser or department on gender crimes, as does the ICTY. A person trained to work with victims of violence against women is essential for the prosecution of sexual violence. The ICC statute must also contain measures for witness protection and witness incognito, so long as they are compatible with the rights of the defendant.

89. Finally, the ICC should provide a mechanism of accountability for non-State actors. In the case of paramilitaries and other non-State actors close to the State, the Velásquez decision of the Inter-American Court of Human Rights provided an unequivocal way in which to hold States accountable by requiring them to maintain due diligence standards in preventing, prosecuting and punishing human rights violations. As for non-State actors waging war on the State, it must be clear that they are bound by international humanitarian law and the principles of individual culpability and universal jurisdiction.

D. Economic and social consequences

90. Armed conflict poses enormous economic and social consequences for women. Women experience armed conflict as direct victims, as refugees and as widows whose husbands have been killed by the conflict. They suddenly emerge as the primary breadwinners and, as in Rwanda, the number of female-headed households dramatically increases. Without the necessary skills to become breadwinners they become further disempowered.

91. The general militarization of society has further consequences for women. As far back as the Second World War, social commentators have been arguing that the militarization of society leads to a culture of violence and that everyday life is imbued with such violence. The use of violence to resolve conflict at the national level leads to the acceptance of violence as a means of resolving conflict in the family and in the community. Both in times of war and times of relative peace, women are often seen as the legitimate victims of this culture of violence.

92. The economic consequences of violence in times of armed conflict are extensive, resulting in the denial of basic amenities to the general population, of which women and their children constitute the majority. Areas affected by armed conflict often do not have electricity, water or appropriate housing or medical services. Food supply to these areas is also affected. Women, many of whom are heads of household, are confronted by the challenge of maintaining their families. In addition, the brain drain resulting from situations of armed conflict leaves a dearth of, inter alia, qualified medical, psychological and legal professionals.

93. The international community, which often plays a role in the conflict through the provision of arms, financial support to one of the warring parties and political sanctioning of the conflict, must likewise play a role in reconstruction after the conflict has ended. An aspect of economic reconstruction must be the economic empowerment of women, especially of war widows and women heads of household. Training programmes for the development of skills and special courses for women is an important part of normalizing life processes in war-torn societies.

94. Economic consequences are not the only factors that emerge. High levels of trauma and trauma-related illness are experienced by populations living in conflict situations. Thus, the process of reconstruction and reconciliation must take into account the problem of psychological healing and trauma. Counsellors trained to work with victim-survivors of violence against women must be available to assist women navigating their way through State structures and taking control of their lives. Victim-survivors of sexual violence are in special need of advocacy, counselling and support. Centres that employ a victim-centred methodology should be established as an aspect of the reconstruction and rehabilitation process.

E. Armed conflict: recommendations

International

95. Existing humanitarian legal standards should be evaluated and practices revised to incorporate developing norms on violence against women during armed conflict. The Torture and Genocide Conventions and the Geneva Conventions, in particular, should be re-examined and utilized in this light.

96. Since peacekeeping has become an important part of the activities of the United Nations, peacekeepers should be given necessary training in gender issues before they are sent to troubled areas. Offences committed by peacekeepers should also be considered international crimes and they should be tried accordingly.

97. Reconstruction and rehabilitation are important components of rebuilding post-conflict societies. The international community should have a special fund and project that has as its primary focus the provision of comprehensive services to post-conflict societies, from economic reconstruction to psychological counselling and social rehabilitation. Such a programme should also include training in human rights and democratic governance.

98. The international legal responsibility of non-State actors should be clarified under international human rights and humanitarian law so that violations by non-State actors do not meet with impunity.

The International Criminal Court

99. The statute of the International Criminal Court should explicitly incorporate provisions on violence against women, both substantively and procedurally.

100. In order for the ICC to be effective in ensuring justice for female victims of war crimes, a gender perspective must be integrated into all areas of the ICC statute. Among the aspects that should be included are:

(a) A gender perspective in the definition of genocide that includes rape and other acts of sexual violence such as forced impregnation, forced sterilization and sexual mutilation;

(b) Unequivocal language condemning rape, enforced prostitution and other forms of sexual violence as grave breaches and serious violations of the laws and customs of war;

(c) Unequivocal language condemning rape, enforced prostitution and forced impregnation, as well as other forms of sexual violence, as crimes against humanity;

(d) Legal remedies for victims, including an individual right to compensation, rehabilitation and access to social services;

(e) Non-political trigger mechanisms;

(f) An independent prosecutor's office with a strong gender division;

(g) Victim-friendly rules of evidence for prosecuting cases of sexual violence based on those currently operative for the ICTY and the ICTR.

National

101. States should make every effort to end impunity for criminal acts under international humanitarian law that occur within their borders and by their security forces. This should include:

(a) Acting with due diligence to prevent, punish and prosecute perpetrators of such crimes, including crimes of sexual violence;

(b) Providing redress for victims, including compensation for injuries and costs, within national mechanisms;

(c) Providing economic, social and psychological assistance to victim-survivors of sexual violence during times of armed conflict.

102. All States should ratify the relevant international instruments of human rights and humanitarian law including the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination.

103. Every State should cooperate with international agencies to apprehend those who have been indicted by international tribunals dealing with war crimes.

104. Every State should amend its penal law, codes of military conduct and other specialized procedures to ensure that they conform with international human rights and humanitarian law.

105. Every State should ensure that their evidentiary procedure does not discriminate against women and that it provides protective mechanisms for victims and witnesses in cases of sexual assault. Rule 96 of the ICTY rules of procedure and evidence should be used as a model.

106. Every State should ensure that all military and law enforcement personnel undergo systematic gender sensitization training. Such training should provide information on how to:

(a) Identify sexual assault as a serious crime under international law;

(b) Outline gender-sensitive procedures in terms of investigation and prosecution and provide an obligatory gender-sensitive methodology; and

(c) Address underlying attitudes of members of the forces which may lead to gender-insensitive action when operating in the field.

107. In addition to gender training for military and law enforcement authorities, other elements of the criminal justice system should also receive training. The prosecution, the judiciary and forensic experts should be given training courses on how to address problems of sexual violence.

108. Every State should adopt the United Nations Code of Conduct for Law Enforcement Officials and update their military codes in order to address sexual violence effectively.

Non-State actors

109. All non-State actors should act within the bounds of international humanitarian and human rights law, recognizing that they are liable for individual crimes against international humanitarian law and that, under universal jurisdiction, they may be prosecuted for such crimes in any court of law.

Non-governmental organizations

110. Non-governmental organizations should make every effort to work with Governments to prevent, punish and prosecute violations of international human rights and humanitarian law.

111. Non-governmental organizations should work towards increasing awareness of the actual situation of women during times of armed conflict through education and training. They should continue to monitor armed conflict situations and expose cases of violence against women both nationally and internationally, utilizing the many international and regional human rights bodies and complaint mechanisms.

112. Non-governmental organizations should provide support services for women victims of armed conflict including economic empowerment and social, psychological and support programmes. They should also be made aware of their legal rights. Non-governmental organizations should assist these women to come forward as victims so that they may end the cycle of impunity.

113. Non-governmental organizations working in the mainstream of human rights should work towards ensuring that all their work incorporates a gender perspective.

114. Gender-sensitive documentation methodologies should be further refined to protect against retraumatizing or placing at risk victim-survivors of violence against women during the fact-finding process.

II. CUSTODIAL VIOLENCE AGAINST WOMEN

115. Custodial violence against women is a particularly egregious violation of a woman's human rights. The State, when it assumes responsibility for an individual, whether such responsibility is undertaken for punitive or rehabilitative reasons, has heightened responsibility for the individual within its custody.

116. The de facto and de jure parameters of custody vary. Internationally, custody has not been clearly defined. Most often used in terms of national criminal justice regimes, custody may also be used broadly to describe the many situations in which the State serves as the physical keeper of an individual, such as in situations of compulsory psychiatric institutionalization or State schooling. Generally, in terms of criminal custody, the term "custody" encompasses both police custody and penal custody, each of which serve as the site for violence against women perpetrated and/or condoned by the State. While the Special Rapporteur notes that violence against women by the State occurs in situations of State psychiatric custody, medical custody, educational custody, and police or penal custody, this chapter will look solely at the last form of custody, that which occurs at the hands of the police or military for criminal justice or pseudo-criminal justice purposes.

117. Women are targeted by the State in their numerous and varied public and private roles. Increasingly, women are targeted by the State for their public activism. Women human rights advocates and activists are arbitrarily detained or arrested, tortured, arbitrarily murdered, "disappeared", and ill-treated at the hands of State actors. Anti-terrorism acts and emergency regulations providing nationwide, easy-to-abuse powers of detention, arrest, investigation and interrogation are often the tools through which silencing occurs.

A. Police custody

118. Forms of police custody include arrest, detention, preventive detention, pre-trial detention and/or court lock-up. Although confinement by the State is an aspect of all of the above-listed manifestations of police custody, each form is slightly different.

119. The understanding of what constitutes an arrest does not differ significantly from State to State: it is a formal procedure undertaken by the State, whereby the State assumes physical control of a person through physical confinement with legal notice. The term "detention", however, has numerous meanings. Generally, it is used to describe the holding of an individual by the police at their station or at a court lock-up without formal charges having been made. Detention is often used during the investigative stage of a case, for the purpose of interviewing or interrogating suspects, and, in some cases, for the individual's safety.

120. While the United Nations Body of Principles for the Protection of All Persons under Any Form or Detention or Imprisonment does not use the term custody, it sets forth the following associated definitions:

(a) "Arrest" means the act of apprehending a person for the alleged commission of an offence or by the action of an authority;

(b) "Detained person" means any person deprived of personal liberty except as a result of conviction for an offence;

(c) "Imprisoned person" means any person deprived of personal liberty as a result of conviction for an offence;

(d) "Detention" means the condition of detained persons as defined above;

(e) "Imprisonment" means the condition of imprisoned persons as defined above.

121. Preventive detention is frequently used in Bangladesh, India and Sri Lanka. Preventive detention finds justification on two grounds. First, in laws such as Sri Lanka's Prevention of Terrorism Act, custody can be used as a mechanism of "protection" for the general public, in order to try to prevent a crime that the police have grounds to believe is being planned or is likely to occur. Often such laws allow for at least temporary clandestine detentions. It is within the context of incommunicado detentions that the majority of blatant State violations of human rights occur. Incommunicado detentions create a situation of immense power for the State or non-State actor who acts as the jailor with little oversight or accountability to balance such power.

122. Second, laws that provide for "safe custody" are used as a mechanism of "protection" for children and women who are victims of certain crimes or circumstances that leave them with no alternative place to go. Victims are thus kept in prison. In Bangladesh, those found in safe custody are usually: (a) girls marrying outside their religious community or against their parents will; (b) rape victims; (c) women and girl children rescued from brothels; (d) destitute women forcibly evicted from their homes due to domestic violence; (e) victims of trafficking; and (f) lost and mentally handicapped children.

123. To imprison such women is manifestly unjust. Not only does it constitute a violation of their human rights by discriminating on the basis of

gender, but also it places women and children at great risk of custodial violence. Numerous cases have been recorded in which women in "safe custody" have been abused and, in some cases, killed.

124. Pre-trial detention most often is in court lock-ups in which pre-trial prisoners wait for their cases to be called that day. In Pakistan, such facilities tend to be used more readily to detain women, and thus State facilities often house more women than men. Many of these women are held illegally for days and nights on end despite the fact that they have not been arrested and thus are not awaiting trial.

125. Penal custody refers to post-conviction confinement in a prison, penitentiary or jail. At this stage of State custody, the responsibility for the prisoner shifts from the policing authorities to the correctional authorities. The vulnerability of women increases during long-term penal custody in which they are under the sole control of prison authorities. In most countries, prison officials are predominantly male, thus creating a situation ripe for sexual abuse, harassment and coercion. Additionally, the world's prison population remains overwhelmingly male. In many cases women are housed in the same facilities as male prisoners. Generally, however, they are segregated from male prisoners.

B. Other forms of custody

126. In many cases, the fact of custody may be obscured: handcuffs may not be used, rights may not be read and jail bars may not be apparent. When police or military personnel enter homes to search, question, intimidate and/or harass, there is at the very least an unspoken presumption, if not an overt order, that those within the home cannot leave, thereby placing them in de facto, albeit in many cases unofficial, custody of the State.

127. Due to the breakdown in the rule of law, such tactics are particularly widespread in times of armed conflict and violent civil unrest, in which both State actors and non-State actors to the conflict or unrest target individuals in their homes. Numerous human rights violations that occur within custodial settings, such as disappearances, extrajudicial executions and torture, including rape, are perpetrated in such circumstances of "constructive custody". Women, the traditional denizens of the private sphere, are particularly vulnerable to such abuse.

128. Custody often extends beyond the four walls of the prison or court lock-up through psychological confinement. Victim-survivors of violence against women in custody report that, even after they were released from overt "custody", the fear that was instilled during their time in custody in many cases carried over into their private lives. Torture, including rape, is utilized by States specifically for such purposes, to inflict pain and suffering upon and to instil fear in an individual both immediately and in the future. Although the actual physical and/or sexual torture may end once an individual is released, owing to the trauma inflicted the suffering continues long after, manifesting itself as flashbacks, physical memories and generalized fear. Psychological custody must be recognized as a distinct form of custody, for which the State maintains the responsibility for remedy and redress.

C. Forms of custodial violence against women

129. In many cases, custodial violence is non-sex specific. Women, like men, are subjected to enforced disappearances, torture and cruel or inhuman treatment, and arbitrary executions. However, even if apparently gender-neutral forms of custodial violence are utilized with gender in mind, if authorities select their techniques based on their perceptions of female versus male frailty, strength or endurance, they are generally not understood as such. Thus, discussion of gender-specific forms of custodial violence revolve largely around custodial rape and other forms of sexual violence against women.

130. The most particularized element in custodial violence against women is the sexualization of torture. Although the sexual anatomy of men as well as women is targeted in the physical stages of torture, rape and the threat of rape, as well as other forms of sexual violence such as sexual harassment, forced impregnation, virginity testing, forced abortion, forced prostitution and forced miscarriage, are perpetrated more consistently against women detainees.

131. Rape has been used as a form of torture not only directly against the rape victims, but also against male family members who are forced to witness the rape of the wives, sisters, partners, daughters or mothers. The act of being forced to watch the rape of another has been recognized as a distinct psychological form of torture. Surprisingly, however, in such scenarios, the rape itself often has not qualified as torture. Rather, like the electric shock, the shackles, or the police baton, the rape of women has been viewed as a weapon of the torturer. Thus, the attack on the woman's body is perpetrated as an attack on the male and, in many cases, is perceived as such, except by the woman herself.

D. Cases of custodial violence against women

Albania

132. In May 1994, police forcibly entered a factory in Tirana to enforce an order of the Mayor of Tirana calling for part of the property to be handed over to the Women's Democratic Front. Six women were among those at the factory. Despite their requests to have the police wait for the director of the factory to arrive, the police subjected the women to ill-treatment. Armanda Bogdani, who was pregnant at the time, had her hair pulled out by the police. The police also punched Violeta Gjoka and Tatjana Karamani for having attempted to settle the problem. Zeqine Dervishi, the vice-president of the opposition party, was taken into custody. She was punched, kicked, insulted, sworn at, and, when she refused to enter the cell, beaten repeatedly and called a whore. 23/

Bahrain

133. On 29 February 1996, eight women (Muna Habib al-Sharrakhi, Zahra Salman Hilal, Iman Salman Hilal, Na'ima 'Abbas, Huda Salih al-Jallawi, Mariam Ahmad al Mu'min, Zahra 'Abdali, and Nazi Karimi) were allegedly arrested and were being held in incommunicado detention at increased risk of being tortured.

It is believed that their arrests may have been connected to public demands by the women, for the release of political prisoners, two of whom were the husbands of two of the detained women. 24/

Bangladesh

134. Shima Chowdhury, a 16-year-old garment factory worker, was walking with her boyfriend near the town of Chittagong. Police personnel arrested both on the grounds that a woman may not walk with a man to whom she is not married, despite the fact that there is no basis under Bangladesh law for such an arrest. They were taken to a nearby police camp. She was afterwards transferred to another police station, where she was forced to drink a glass of what she thought was muddy water. She became dizzy and, in that state, the policemen raped her, after which she gradually lost consciousness. The next morning, Shima was taken to the emergency ward of the Chittagong Medical College Hospital. A medical inquiry board was set up after Shima disclosed that she had been raped. In October 1996, when the case went to court, the court, on a plea from the police, sent her to "safe custody" at the Chittagong Jail, an exceptional, unwarranted order. Shima remained in detention without access to a lawyer or visits by her friends or family. She developed severe health problems. Shima died in February 1997, allegedly from typhoid fever. 25/

135. The four policemen accused of raping Shima were acquitted by a trial court on 14 July 1997. The judge reportedly deplored the actions of government lawyers who, in presenting such a weak case, effectively allowed the police to get away with custodial rape.

Chad

136. Belkoum Odette, who was accused of stealing bracelets, was arrested on 15 September 1996 and held for over 10 days at the Béboto gendarmerie headquarters. When the armed forces searched her house and found nothing, she was tied with her arms behind her back and whipped. The deputy commandant hit her and authorized others to do so as well. He burned her nipples. Her 15-year-old daughter was tied up and raped by the security forces as Belkoum Odette lay there dying. The main perpetrator of the murder and rape was arrested but escaped from prison with inside help. He is reported to be working at the Presidential Palace. 26/

Colombia

137. Margarita and Lina Mariá Arregocés are teachers and founders of the Sabana School in Planadas de Mosquera. They were arrested in November 1995 on charges of "conspiring to commit a crime" and belonging to the Colombian Armed Revolutionary Forces. On 28 February 1996, Reinaldo Villaba, a human rights lawyer, received an invitation from the paramilitary group Colombia sin Guerilla to Margarita's funeral. This death threat was sent just before the appeals court ordered the release of the two sisters. There have been numerous other instances of acquitted political prisoners being targeted by security or paramilitary force. 27/

Kenya

138. Josephine Nyawira Ngengi, a human rights activist and the sister of a well-known government critic, has been arrested three times and tortured while in detention. She was beaten and blunt objects were forced into her vagina until she bled. According to Ngengi, "at one point, one officer got so incensed that he took a wooden plank and hit me hard on the head. I was then ordered to wipe the blood from the resulting wound with my tongue, which I did." 28/

Pakistan

139. Murder, zina (sexual intercourse between partners not married to each other), blasphemy, rape and hijacking are some of the offences that receive the death penalty under the Hudood Ordinance. The death penalty in Pakistan is applied in a discriminatory fashion since the testimony of women, whether they are the accused or the victim, is not heard. Women have been sentenced to being stoned to death for zina without the testimony of the woman ever being heard. A pregnant woman may be sentenced to death without the assurance that the execution will be delayed until after the birth. 29/

Tunisia

140. Tourkia Hamadi is one of many women who have been imprisoned for their alleged support of "unauthorized political opposition parties". She was arrested in 1995 for her alleged support of al-Nahda, the illegal Islamist party, and had helped her husband seek political asylum in France. Since her husband's departure in 1992, Hamadi has been repeatedly taken into custody and interrogated. Numerous women have been forced to endure repeated interrogation, torture, threats of prosecution, harassment and intimidation. Other women have been arrested solely on the basis of their alleged "association" with supporters or leaders of the Islamist movement. In addition, wives of exiled Islamist members cannot leave Tunisia to be with their husbands because their passports have been confiscated. 30/

Turkey

141. After being forcibly taken from her home and then detained by security forces in Ankara for 15 days, Sevil Dalkiliç, a 33-year-old woman lawyer, was tortured severely and coerced into signing a statement implicating herself in several bombings. Subsequently, after an allegedly unfair trial, she was sentenced to 30 years' imprisonment for illegal membership in the Kurdish Workers' Party (PKK), throwing explosives and separatism. In addition to being verbally abused and threatened with death, Dalkiliç was sexually assaulted repeatedly and threatened with rape. Allegedly, in the process of her torture, her jaw was dislocated, she was subjected to electric shock, hosed with pressurized cold water, forced to watch other detainees being stripped and beaten, and denied sleep, food and access to toilet facilities. Her arrest and subsequent torture occurred after she accepted and then investigated a case involving the suspicious death of a person of Kurdish background in which State involvement had been alleged. 31/

E. National measures to prevent custodial violence

142. The Special Rapporteur would like to draw attention to reports compiled by the Commission on the Status of Women relating to "physical violence against detained women that is specific to their sex", from which much of her information has been drawn.

143. Most, if not all, countries have explicit legal prohibitions on custodial violence, including torture, rape, force, coercion, threats and any form of physical violence or abuse of an individual in the custody of the State. Such prohibitions are contained in penal codes, constitutions, ministerial decrees and other specialized legislation.

144. Many countries, including Cameroon, Cuba, Egypt and Switzerland, penalize, under either the penal law or administrative functions, sexual intercourse between a man and a woman involving the abuse of the man's professional authority. In Cuba, special sanctions are applied to anyone who, while wearing a military uniform or appearing as a public official, violates the physical integrity of a detained woman by sexual abuse or harassment. In the United States of America, sexual abuse of one inmate by another constitutes a federal criminal violation of civil rights if it can be proved that the inmate's actions were taken with approval or encouragement of a law enforcement officer.

145. Section 114A of India's Evidence Act provides that in cases of, inter alia, custodial rape, where the victim claims non-consent and where sexual intercourse has been proved, there then arises a rebuttable presumption of non-consent. In other words, once the prosecution fulfils its burden of proving that sexual intercourse did occur, it has no additional burden of proving non-consent.

146. In order to avoid violence by male inmates against female inmates and to provide women with some level of privacy, most States detain men and women separately either in the same prison or in separate facilities altogether. Contact between male and female prisoners is generally either completely proscribed or subject to strict limitations and supervision.

F. International standards on the treatment of individuals in State custody

147. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights are the two primary international instruments addressing human rights abuses by the State, including of individuals within the custody of the State. In addition to the proscriptions against torture and ill-treatment, disappearances, arbitrary detention and arbitrary executions contained within these treaties, international standards exist for the treatment of individuals in State custody.

148. The Special Rapporteur would like to call attention to those existing United Nations mechanisms, in addition to her mandate, that have the capacity to address State violence against women, which are the following:

(a) The Special Rapporteur on the question of torture;

(b) The Special Rapporteur on extrajudicial, summary or arbitrary executions;

(c) The Special Rapporteur on the independence of judges and lawyers;

(d) The Special Rapporteur on religious intolerance;

(e) The Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights;

(f) The Committee against Torture; and

(g) The United Nations Voluntary Fund for Victims of Torture, which provides monetary compensation to victims of torture.

149. The Standard Minimum Rules for the Treatment of Prisoners require, so far as is possible, men and women prisoners to be detained in separate facilities. In institutions that hold both male and female prisoners, separate quarters within the institution must be provided for women.

150. The Standard Minimum Rules proscribe male prison authority over female inmates. According to rule 53:

> "(1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.
>
> "(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.
>
> "(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women."

G. Recommendations

151. States should fully implement the Standard Minimum Rules for the Treatment of Prisoners and ensure that protective measures are guaranteed in all situations of custody.

152. States should abolish "protective custody" and should assist non-governmental organizations, in particular by providing financial resources, to create alternatives for women in need of shelter.

153. States should work towards the abolition of laws and emergency regulations that curtail the rights of suspects and grant State authorities wide discretionary powers of detention and interrogation, thereby creating a situation ripe for custodial violence.

154. States should have mechanisms of redress for custodial violence and should hold perpetrators of custodial violence accountable under national laws.

155. States should provide ongoing gender-sensitization training for police and prison personnel.

156. States should abolish discriminatory laws and evidentiary rules that lead to disproportionate levels of incarceration of women for crimes like adultery.

157. States should provide legal literacy training for women.

158. Upon arrest or detention by a State authority, States should immediately provide attorneys or advocates for women.

159. Traditional human rights mechanisms should make an effort to investigate violence against women in custody, giving such violations the same priority as violence against men in custody. In their reporting, such mechanisms should consistently incorporate a gender analysis.

III. VIOLENCE AGAINST REFUGEE AND INTERNALLY DISPLACED WOMEN

160. The plight of refugee and internally displaced women, and the suffering that they may face on account of their gender, has generated widespread discussions as to how the international community can best protect such women. The risks to which they are exposed will be considered in two ways in this chapter: the persecution that they fear or have suffered which has caused them to leave their home, and the risk of ensuing violence which they face having become refugees.

161. The 1951 Convention relating to the Status of Refugees defines "refugee" as an individual who has "a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion...". Additionally, refugee women may face persecution on the grounds of language, ethnicity, culture or gender, criteria which may also be interpreted to define the term "social group" in accordance with the Convention. Internally displaced women are likewise forced to leave their homes because of such persecution. The main difference between refugee and internally displaced women is that internally displaced women have not crossed any international border and, thus, cannot avail themselves of the protection of international law.

A. The nature of gender-based violence in creating refugee situations

162. Gender-based violence has been widely documented. It serves not only as a basis for flight, but also as a consequence of flight within countries of asylum and/or refugee camps. Various forms of violence against women give rise to refugee flows.

163. The use of systematic rape during times of armed conflict as a weapon of war to intimidate, humiliate and degrade women, their families and communities, has been brought to the attention of the international community

most recently following the conflicts in the territories of the former Yugoslavia and Rwanda. Furthermore, some harmful traditional practices affecting the health of women and girls, especially female genital mutilation, have been recognized by some States as a form of persecution and are in violation of international law.

164. Women or girls may be killed by their own family members as a result of what is known as "crimes against honour"; in particular circumstances such action is endorsed and exacerbated by the community in order to save the family honour. Reports indicate that, in some countries, if an unmarried woman loses her virginity, she is considered to have brought shame upon her family, even if this results from being the victim of rape. The victim's parents are no longer able to marry her, and she may be exposed to a great risk of persecution by members of the community, as well as her own family.

165. In other situations, women have fled when the authorities have failed to protect them from physical abuse, including domestic violence and rape, inflicted as punishment for failing to conform to the social or cultural norms advocated by their attackers. These and other forms of gender-based violence may cause women to flee their homes to become internally displaced or to leave their country and seek refugee status under the 1951 Convention.

B. The current legal status of persecution on the grounds of gender

166. Gender-based violence is a violation of international law, in particular the fundamental right to the security of person, including the right not to be subjected to torture or cruel, inhuman or degrading treatment. However, the recognition of gender-based persecution as a ground for refugee status is relatively new. Increasingly, States and international organizations are recognizing the argument that persecution based on gender is a legitimate ground for granting refugee status.

1. International developments

167. The European Parliament in 1984 determined that women facing cruel or inhuman treatment because of the perception that they transgressed social mores should be considered a special group for the purposes of determining refugee status.

168. A 1995 report of the Inter-American Commission on Human Rights on Haiti concluded that rape as a weapon of terror against women is a crime against humanity in peacetime. The United States Board of Immigration Appeals has also recognized that Haitian women raped for political retribution may qualify for asylum.

169. Neither the 1951 Convention nor the 1969 Organization of African Unity Convention on the Specific Aspects of Refugee Problems in Africa recognize gender-based persecution as a grounds for granting refugee status. Additionally, both conventions fail to provide for the particularities of women's experiences as refugees, the most notable of which is the difficulties women face in meeting the legal criteria for persecution established by the Convention which is due primarily to the fact of their exclusion from public

life. The Convention on the Elimination of All Forms of Discrimination against Women has also been criticized as it does not address issues surrounding refugee women.

170. At the same time, however, the Executive Committee of the Programme of the United Nations High Commissioner for Refugees has in recent years, and as already mentioned above, adopted a number of conclusions focusing on refugee women and gender-based persecution in an attempt to adapt the 1951 Convention to the realities of our times.

171. The Office of the High Commissioner (UNHCR) encourages countries to consider that rape or other forms of sexual violence, when committed as measures of oppression against a person's race, religion, nationality, membership of a particular social group or political opinion, and particularly when such actions are condoned by the authorities concerned, should be grounds for asylum. Rape and sexual violence may be considered grounds for persecution within the definition of the term "refugee" in the statute of the Office (para. 6 A(ii) and the 1951 Convention (art. 1 A (2)) if the acts are perpetrated or "knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection". 32/

172. UNHCR also recognizes that female genital mutilation constitutes a serious violation of the human rights of women, in accordance with the Convention on the Rights of the Child and the Declaration on the Elimination of Violence against Women, thereby providing a legitimate ground for seeking asylum. Forcible abortion or sterilization may also constitute gender-based persecution and thus lead to the granting of refugee status. Presently, however, Canada and the United States of America are the only countries that have incorporated this policy into their refugee determination procedures.

173. The UNHCR Executive Committee condemned persecution through sexual violence as a gross violation of human rights, a grave breach of humanitarian law, and a particularly serious offence to human dignity. The Executive Committee urged States to respect and ensure the fundamental right to personal security, and to recognize as refugees persons whose claim to refugee status is based on a well-founded fear of persecution, through sexual violence, for reasons of race, religion, nationality, membership of a particular social group, or political opinion.

174. The Executive Committee has recognized that States, in the exercise of their sovereignty, are free to adopt the interpretation that women asylum seekers who, for example, face particularly severe gender-based discrimination may be considered as a "particular social group" within the meaning of the 1951 Convention's refugee definition. The Special Rapporteur is encouraged that UNHCR, in its efforts to institutionalize a policy on gender-based persecution, recently convened an expert seminar on gender-based persecution in Geneva and is currently elaborating guidelines on gender-based persecution.

175. Most recently, the United Nations Division for the Advancement of Women, in cooperation with the Centre for Refugee Studies at York University in Canada convened an Expert Group Meeting on Gender-Based Persecution in Toronto, from 9 to 12 December 1997. The meeting considered, inter alia, the

legal claims and needs of refugee women and those who are internally displaced and made recommendations in that respect, which the Special Rapporteur would like to support.

176. In this context, experts at the meeting recognized that severe discrimination and harassment, particularly, but not exclusively, in armed conflict or in an atmosphere of insecurity, may constitute persecution. It considered that severe restrictions on women's enjoyment of their human rights, including with respect to education, employment and freedom of movement, such as forced seclusion, meet the definition of persecution for the purposes of the 1951 Convention in those cases where women experience such restrictions as a profound violation of their dignity, autonomy and status of human beings. The meeting noted that penalties imposed on women for violating social mores which do not amount to violations of human rights may be disproportionate and that, in such circumstances, social mores and the threat of penalty for their transgression will amount to persecution. The meeting, therefore, recommended that such ill-treatment be recognized as persecution and considered that past persecution, combined with the risk of ill-treatment upon return, may give rise to compelling reasons for non-return.33/

177. The meeting also recommended that persecution as a result of expressed or imputed feminism, or failure to conform to conventional gender roles, or because of activities during armed conflict or imputed opinion as a result of the opinion of family members should all be regarded as persecution on the grounds of political opinion for the purposes of the 1951 Convention.

178. The meeting further recommended, where a woman's sex or gender is a significant reason for persecution, her fear of persecution should be recognized as being on account of her membership of a particular social group under the 1951 Convention, namely "women". The claimant should, however, not need to prove that all other women have a well-founded fear of persecution or, conversely, that she would be singled out from among other women.

2. National developments

179. A number of countries have developed, in their refugee determination guidelines and procedures, important precedents relating to women seeking asylum on the grounds of gender-based persecution. Below, the Special Rapporteur has selected some national examples, including case studies, which provide judicial interpretations, to illustrate recent developments in connection with gender-based persecution.

180. In 1996, Canada reissued its "Gender Guidelines for Asylum Adjudications", originally issued in March 1993. Through these guidelines, Canada became the first Government to recognize formally that a woman fleeing persecution on gender-specific grounds can claim to "fear persecution on account of her membership in a particular social group".

181. The Canadian experience has shown that female claimants generally fall into four main categories, namely those who fear persecution: (i) on the same basis as men; (ii) because of their kinship and/or family relations; (iii) because of a failure to conform to social mores and cultural norms; or (iv) because of violence committed against them due to their gender. The

Supreme Court of Canada has incorporated the "gender" element in its reinterpretation of "social group", describing it as a section of society "defined by an innate or unchangeable characteristic" such as "gender, linguistic background or sexual orientation".

182. A test to determine whether people could be considered to constitute a "particular social group" for the purposes of the 1951 Convention, was articulated by Justice Mahoney in the Federal Court of Appeal case of Mazers v. Canadian Minister of Employment and Immigration. This case involved a claim for refugee status on the basis of membership of a particular social group by a group of Trinidadian women who were victims of domestic violence. Justice Mahoney's test stated that:

> "[a] particular social group means: a natural or non-natural group of persons with (i) similar shared background, habits, social status, political outlook, education, values, aspirations, history, economic activity or interests contrary to those of the prevailing government, and (ii) sharing basic, innate, unalterable characteristics, consciousness and solidarity."

183. The meaning of "social group" under the 1951 Convention was also considered in the case of R. v. The Immigration Appeal Tribunal and the Secretary of State for the Home Department, ex parte Syede Khatoon Shah, which concerned a claim for asylum in the United Kingdom by a citizen of Pakistan who stated that she had suffered domestic violence and faced the death penalty for alleged adultery under Sharia law. She argued that she belonged to a definable group, namely women who had suffered domestic violence in Pakistan. The special adjudicator said:

> "It appears to me that there is no accepted definition of social group and it is no more possible for a woman who has suffered domestic violence to be herself within the meaning of social group in the Convention than it is for anyone who has been divorced to say that s/he is a member of a social group for the purposes of (the) Convention or, indeed, anyone who has a criminal record to be able to say similarly."

184. This decision has been criticized in that the individualized approach of the Convention refugee definition requires attention to personal circumstances, time and place, all of which may combine to distinguish those at risk from others who may share similar characteristics and yet not be in danger. The criticism maintains that although there will be policy pressures to limit refugee categories in periods of increased displacement, there is no rational basis for denying protection to individuals who, even if divided in lifestyle, culture, interests and politics, may yet be linked across another dimension of affinity.

185. The final conclusion of the case provided that the facts established were capable of bringing the client within article 1 A (2) of the 1951 Convention. However, this case has unfortunately since been overturned, nullifying what would have been an extremely valuable precedent in asylum law.

186. In the Matter of MK in the United States a women from Sierra Leone had requested asylum on the grounds of persecution based on domestic violence.

Independent evidence was produced which demonstrated that violence against women, especially wife-beating, is common, disobedience on the part of a wife is considered a justification for punitive measures by the husband, police are unlikely to intervene except in cases of severe injury or death, and few cases of violence go to court. Court acknowledged the lack of national protection and made a finding of persecution. In defining persecution, the judge referred to internationally recognized human rights instruments such as the United Nations Declaration on the Elimination of Violence against Women.

187. In R. v. Secretary of State for the Home Department, ex parte Miatta Sharka, the High Court in the United Kingdom of Great Britain and Northern Ireland addressed the issues of rape and gender-specific violence as a basis for asylum for citizens of Sierra Leone. Although the case was dismissed, it is interesting to note the remarks made by Justice Turner on the position of women who fear rape or gender-specific violence and the relation of such fear as grounds for asylum: "I have no difficulty with the concept that if there was systematic rape as part of an envisaged policy of an organization or group within a country that included rape as one of its activities, such would be capable of amounting to a Convention reason".

188. The United States "Guidelines on Gender Issues in Asylum Claims" recognize a variety of forms of gender-related persecution including: sexual violence, including sexual abuse, rape, infanticide, female genital mutilation, forced marriage, slavery, domestic violence and forced abortion.

189. In the case of Fatin v. Immigration and Naturalization Service, the Iranian claimant based her claim for asylum in the Unites States of America on persecution based on her membership in a particular social group and her political opinion. She claimed that she would be forced to submit to the traditional Muslim view of a woman's proper role within society, including wearing the chador or veil, while in public. She asserted that discriminatory treatment of women in the Islamic Republic of Iran was in direct conflict with her belief in freedom of expression and equality of the sexes. The court held that although feminism could qualify as a political opinion within the meaning of the statute, the administrative record did not establish that Iranian feminists are generally subject to treatment so harsh as to qualify as persecution.

190. The Australian guidelines governing asylum claims specify that "rape and other forms of sexual assault are acts which inflict severe pain and suffering (both mental and physical)... such treatment clearly comes within the bounds of torture as defined by the Convention against Torture. Furthermore, sexual violence amounts to a violation of the prohibition against cruel, inhuman or degrading treatment, the security of person and in some instances the right to life as contained in a variety of instruments".

191. A number of European courts have also interpreted sexual violence and rape as forms of persecution. An Order by the Austrian Ministry of the Interior dated 11 August 1995, regarding the granting of asylum for victims of rape specifies that: "On the basis of the Geneva Convention and the 1991 Asylum Law, rape just like any other violation of a person's physical integrity is a ground for asylum, provided it was motivated by one of the reasons in the Geneva Convention." In France, the Commision des recours des

refugies granted refugee status to a women who had been raped a number of times by the military and further detained for refusing to return to the military camp for fear of sexual violence owing to her fear of persecution. The German authorities granted refugee status to a women who expressed her political opinion and showed her aversion to strict Islamic rules not only through conversation and refusing to join prayers, but by refusing to wear the chador. The court considered that women's disagreement with the dress regulations and the subordinate role of women to be a political opinion.

192. The United States Immigration and Naturalization Service (INS) decision, In Re Kasinga, is an encouraging development advocating recognition of female genital mutilation as grounds for political asylum. Fauziya Kasinga, aged 19, was a member of the Tchamba-Kunsuntu tribe of northern Togo. Young women of that tribe normally undergo female genital mutilation at age 15. Kasinga was not subject to this procedure due to the protection of her influential father. Upon the death of her father, however, her aunt forced her into a polygamous marriage to a 45 year-old man, and both of them planned to submit her to the procedure before consummation of the marriage. After fleeing to Ghana and Germany, Kasinga sought asylum in the United States of America where she had relatives.

193. The case of Kasinga was well documented as to the practice and effects of female genital mutilation and the international campaign to eradicate harmful traditional practices affecting the health of women and children. In defining female genital mutilation and finding that the described level of harm constituted "persecution", the INS followed the 1995 Gender Guidelines which state that rape, sexual abuse and domestic violence, infanticide and genital mutilation are forms of mistreatment primarily directed at girls and women and they may serve as evidence of past persecution on account of one or more of the five grounds.

194. One concurring opinion in the case stated that "there is nothing about a social group definition based upon gender that requires us to treat it as either an aberration, or as an unanticipated development requiring a new standard". The concurring judge was of the opinion that social group was a catch-all category beyond political opinion, race, religion or ethnicity, and emphasized that social group claims, unlike political opinion claims, are status-based and do not necessarily require a showing that the specific individual's opinions or activities were the cause of the persecution.

195. Another interesting development at national level in relation to traditional practices as a basis for asylum on the grounds of persecution, was a case before the Australian Refugee Review Tribunal. The Tribunal denied refugee status to a women who had refused an arranged marriage, and had been assaulted and raped by the suitor as a result. The Tribunal concluded that the rape did not occur for a Convention reason but was a criminal act at the hands of an individual. As there had not been a systematic failure of State protection but rather a failure to act based on an insinuation from the applicant's father that she was a liar. The assault and rape were as such not interpreted as persecution in this context, as State protection had not been systematically denied.

3. Academic opinion

196. Criticisms expressed within academic circles generally conclude that international law has failed to establish an adequate framework within which to tackle the very unique problems of refugee women. Suggestions as to how this should be done comprise two main schools of thought, one of which argues that gender should be included as a persecution ground in the Convention's definition of refugee, and that the term persecution should be reformulated to take the experience of women into account, whilst the other maintains that issues of gender can and should be dealt with within the existing structure.

197. If the Convention recognized persecution because of gender, individual women would then merely have to prove that they were persecuted because they were women rather than proving that they were members of a social group of persecuted women with common beliefs and practices.

198. One writer is of the opinion that sexual violence should be attributed to the State if the authorities are unwilling to offer protection to the victim. He suggests that Iranian women who refuse to wear a veil or chador and are persecuted are not being persecuted because they are women, because women who wear veils are not persecuted. The woman is persecuted because she refuses to be a "proper" woman in the eyes of the authorities. Her refusal is an expression of political and/or religious opinion and these are the grounds on which she should claim asylum. He maintains that the general pattern of discrimination against women in a society is not persecution based on gender, but on political or religious opinion that women should not be denied certain rights.

C. Cases of violence against refugee and internally displaced women

199. The following are cases of violence against refugee and internally displaced women and cases of claims for asylum on the grounds of gender-based persecution which illustrate the different forms of violence against women that may serve as the basis for such claims.

Nepal

200. A 22-year-old Tibetan woman, in flight from China via Nepal to India, was allegedly raped 12 times by a group of Nepalese men led by a police officer on 15 and 16 December 1996. The multiple rape reportedly took place on the outskirts of Barabisa, 90 km north-east of Kathmandu. On 20 December 1996, the victim was treated in a hospital in Kathmandu for internal injuries. It is reported that the Nepalese authorities initiated an investigation, after being notified of the incident. However, to date no action appears to have been taken to bring the perpetrators to trial.

201. Whilst a group of Tibetans, in flight from China via Nepal to India, were being detained at Chogsham police post in Lama Bhagar, north-eastern Nepal, 12 policemen reportedly tried to persuade a Tibetan man to provide a girl from his group for sexual services, in return for safe passage to Kathmandu. The group refused to cooperate with the police and were later released after handing over 8,000 yuan to the policemen. 34/

Somalia

202. A Somali mother feared returning to Somalia and losing custody of her two children, a daughter, aged 10, and a son, 7. According to documentary evidence, the children belonged to the clan of their father, and for this reason a divorced woman would not be awarded custody of her children. She allegedly also feared that she would be powerless to prevent her daughter from being subjected to female genital mutilation against her wishes. The mother described the terror of her own experience of female genital mutilation and the resulting health problems she experienced on reaching adulthood.

203. With respect to the claim of the 10-year-old girl, the panel found that her rights to personal security would be grossly infringed if she were forced to undergo female genital mutilation, citing article 3 of the Universal Declaration of Human Rights. The Convention on the Rights of the Child, which explicitly protects children from acts of cruelty and torture and requires States to take steps to abolish traditional practices prejudicial to the health of children, was also referred to. 35/

China

204. In 1995, the Supreme Court of Canada considered an appeal from a Chinese refugee claimant who feared forcible sterilization upon return to China. 36/ The dissenting opinion found that forced sterilization could be considered to be persecution, as follows:

> "... it is utterly beyond dispute that forced sterilization is in essence an inhuman and degrading treatment involving body mutilation and constitutes the very type of fundamental violation of basic human rights that is the concern of refugee law." 37/

205. In a decision of the United States Board of Immigration Appeals published in December 1996, the Board held that forced sterilization or forced abortion substitutes for (past) persecution on account of political opinion and qualified the asylum seeker as a refugee under the amended definition of that term.

206. A Chinese national had been employed as a birth control officer for three years in his commune. On four occasions he participated with other officers in seeking out women who had violated the one-child policy imposed by the Government, tying the women up with ropes and taking them to the hospital where they were forcibly aborted or sterilized. He testified that he was aware of all the methods used to implement the one-child policy in his commune, including forcible abortion on women in advanced stages of pregnancy and the killing by injection of foetuses born alive. The claimant was excluded from being granted asylum in Canada under article 1 F (a) of the 1951 Convention, as the panel found that the claimant had been an active participant in persecutory acts amounting to crimes against humanity. Failing this, it was undisputed that the claimant was an accomplice to crimes against humanity as he was a knowing member of a birth control unit whose objective was to implement birth

control policies, including forcible abortion and sterilization. The Federal Court of Canada denied leave for judicial review of this decision. 38/

Romania

207. The claimant was physically abused by her husband in Romania for 16 years. The claimant testified that she was told repeatedly by policemen that they could not get involved because she and her husband were a married couple, and that they would only get involved if the beating was connected to a crime. The documentary evidence confirmed the unavailability of protection for abused women in Romania. Although domestic violence is estimated to be widespread, many authorities and doctors, invoking Romania's strong family tradition, refuse to consider it a serious issue. The claimant was determined to be granted refugee status under the 1951 Convention by reason of a well-founded fear of gender-related persecution. 39/

D. Violence against refugee women

208. Refugee women and girls are particularly vulnerable to sexual attacks whilst in flight. There are reports of gang-rape, forced "marriages" and sexual mutilation by bandits, members of armed groups or fellow refugees. The need to cross military lines or areas affected by anarchy or civil war in order to reach safety puts women and girls in especially perilous circumstances as they are at great risk of being subjected to sexual exploitation in return for passage to safety, the grant of refugee status, or legal documentation.

209. Gender-based violence which occurs in countries of asylum or in refugee camps has been widely documented, including in the preliminary report of the Special Rapporteur. Refugee camps are frequently in dangerous locations, near war zones or disputed borders. Armed attacks on the camps often involve the rape and abuse of women. Soldiers are known to have kidnapped refugee children and demanded sex from their mothers as a ransom for their return. Where there is no opportunity for work in the camp, or where camp administrative systems do not ensure that women receive their rations, the difficulty of meeting basic subsistence needs often leads women or girls to prostitute themselves in exchange for food, shelter and protection.

210. Due to the general decline in law and order, traditional behavioural norms within affected communities often break down. Refugee women and girls have reportedly been raped by other refugees. Furthermore, the frustration of camp life can lead to increased domestic violence including sexual abuse within the family. In a normal community environment the extended family might become the main protectors of a vulnerable wife or daughter, but such family groups are often dispersed during conflict and displacement. The knowledge that chances of being reported or punished are minimal exacerbates women's vulnerability. In the refugee camps around Rwanda in 1994, it has been reported that virtually every women and girl past puberty was raped and/or sexually assaulted.

211. Occasions and opportunities for rape are frequent in refugee camps. Preventative measures such as lighting the passageways to toilets and washrooms, building male and female toilet blocks in separate areas (so that women and girls do not risk going to the forest for privacy), building separate wash areas for women, and changing the layout of the camps would make life more secure for the female population. The Special Rapporteur is pleased to note that such measures are currently being implemented by UNHCR.

212. Apart from the brutality and trauma of the rape and sexual violence itself, medical problems suffered by refugee women include miscarriages, unwanted pregnancy, infections, sexually transmitted diseases and HIV/AIDS, psychological trauma, depression, suicide, nightmares, insomnia and fear. The provision of medical and psycho-social care and counselling are, therefore, critical. The main obstacle to providing care is often the victims' unwillingness to talk about their experience. Their shame and fear of rejection by partners or their family often prevents them from seeking medical attention and support. As already mentioned, in many societies a woman's chastity is considered to be a matter of family honour. Even under normal circumstances, in many communities sex is not a matter which is discussed. Thus it has been found to be more prudent to provide care and treatment for women more generally, so as to avoid singling out rape victims.

213. Within the country of asylum, as the community tries to reinforce its cultural identity away from home, the resurgence of harmful traditional practices affecting the health of women and children, such as female genital mutilation, also render women vulnerable to violence.

E. Projects to protect women refugees from gender-based violence

214. UNHCR has carried out various projects related to violence against refugee women and has been able to improve and modify its projects in the light of experiences gathered in the process.

Crisis intervention teams in Ngara camp, United Republic of Tanzania

215. In view of the extreme sensitivity of the topic of sexual violence, UNHCR considered it crucial to involve refugees themselves in identifying an appropriate response mechanism to sexual violence and rape, at the same time developing confidence and trust. Participatory discussions indicated that during the first few months a degree of security against assault was offered due to extreme overcrowding in the camps and lack of privacy. It was, however, noted that after that sexual violence increased.

216. In response, in March 1995 crisis intervention teams (CITs) were established, composed of refugees and supported by non-governmental organizations, to provide community service in each camp. Motivating the implementation of CITs was the belief that victims would be more willing to report an assault on a refugee who shared the same language and culture and understood the social ramifications and significance of the event. CIT members, who were constantly present in the community, could offer more sustained support for victims. Additionally, CIT members could act

as advocates for the victims during the process of gathering relevant information, thereby sparing them the ordeal of answering the same questions from many different professionals.

217. The Refugee Information Network (RIN) was created in late 1994 after it became apparent that the existing channels of communication between humanitarian organizations and the refugees were too narrow. RIN consisted of newsletters, radio broadcasts, bulletin boards, posters, videos and discussion sessions. Information systems were used for an awareness campaign on sexual violence.

218. Concrete measures for increasing safety were introduced. Water points were open only during daylight hours and refugees organized a timetable for different groups using the same taps. Security guardians at water points caught blackmailing refugees were dismissed from their jobs. Also, provision of wood fuel to the most vulnerable individuals in the camps by humanitarian agencies was arranged. Unfortunately, after a short period of time the arrangement had to cease for financial reasons.

Kenya

219. In Kenya, in 1993, UNHCR established the Vulnerable Women and Children's Programme in an effort to prevent the occurrence of sexual violence in the Somali refugee camps in north-eastern Kenya. The magnitude and severity of violence against women in the Dadaab camps in the North Eastern Province led to the establishment of the Women Victims of Violence (WVV) project in October 1993. The primary focus of the project was to prevent a range of problems associated with physical and mental trauma, particularly those resulting from the social stigma of rape in a traditional society. Medical care for victims of violence, physical and legal protection of refugee women, and the empowerment of women through income-generating activities and community groupings constituted important elements of the project. The project also emphasized protection and sensitization training for local security personnel, local government officials, implementing partners and community elders that sought to raise awareness about the rights of refugee women and the peculiar problems they must confront.

220. Through the live-fencing programme, 100 kilometres of live thorn bushes were planted within the camps to serve as a strategy to prevent bandits from reaching the living quarters of refugees. Local police presence within the camp and their capacity to respond rapidly to the sighting of bandits had a deterrent effect.

221. An agreement was signed with the Kenya Chapter of the International Federation of Women Lawyers to send a female lawyer to UNHCR. Under this system legal counsel was provided and follow-up action with the police and magistrates was undertaken to ensure the prosecution of apprehended culprits.

222. The "WVV" project achieved a reduction in the incidence of rape, although it initially experienced a rise in fraudulent claims of rape, in the expectation that additional assistance, and particularly third country

settlement, would be obtained. This project has since developed successfully and has been institutionalized to achieve a useful preventive effect.

F. Recommendations

223. States parties to the 1951 Refugee Convention are urged to adopt guidelines with respect to gender-related asylum claims.

224. There is a great need for more female doctors to meet the gynaecological and related care needs of refugee women. Training is necessary for health professionals to make them aware of the particular problems faced by women, particularly in relation to gender-based violence.

225. Confidential medical assistance, legal assistance, and culturally appropriate, community-based psycho-social counselling for victims and their families should be provided to prevent rejection of and attachment of social stigma to the victims.

226. As a measure of protection against rape in refugee camps, special accommodations for unaccompanied women and girls with sufficient security personnel should be provided. Where practical, women and girls should have the ability to lock their sleeping and washing facilities.

227. Women should be allowed to make an individual decision regarding repatriation. Urgent resettlement for rape victims might provide the best chances for emotional recovery for victims of rape for whom neither repatriation nor local integration is a viable solution.

228. Refugee women almost always require legal assistance and should be given some legal literacy training to improve their knowledge of their legal rights. Any such training should highlight the interrelationship between protection and social services in the camp and address issues such as child marriage, child labour, adult marriage and abortion.

229. Asylum procedures must be revised to sensitively address women refugees who have suffered violence, including rape during times of armed conflict. Interviewing procedures must be designed to facilitate the detection of gender-based violence. It has been documented that many women refugees are suffering from post-traumatic disorders and require psychological counselling in order for them to cope with all that they have suffered and seen. The asylum process often appears confusing, frightening and humiliating. Female refugees should be interviewed by female officers who have expertise in international human rights law as well as international and national refugee law, who have been trained and who are aware of the circumstances and problems faced by women in particular countries.

230. Governments should seek to remove legal and administrative barriers to women seeking asylum on the basis of gender-based persecution.

Notes

1/ The Special Rapporteur would like to thank the following people for their assistance in compiling this report: Lisa M. Kois, Rosanna Favero, Minari Fernando, Sunithi Kuruppu, Helen Kinsella, Andréa Séguin, Vidya Ram, Shobana Kanagasingham, Astrid Aafjes, Ali Miller, Karen Parker, Kelly Dawn Askin, Christine Chinkin, Diane Orhenlicher and the War Crimes Research Office of the Washington College of Law, Mel James and Amnesty International, and the Office of the Prosecutor for the ICTY.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

QUESTION OF HUMAN RIGHTS IN CYPRUS

Report of the Secretary-General submitted pursuant to Commission on Human Rights decision 1997/121

1. The Commission on Human Rights, in its decision 1997/121 of 16 April 1997, decided to retain on its agenda item 10 (a) entitled "Question of human rights in Cyprus", and to give it due priority at its fifty-fourth session, it being understood that action required by previous resolutions of the Commission on the subject would continue to remain operative, including the request to the Secretary-General to provide a report to the Commission regarding their implementation. The present report is submitted pursuant to that decision.

2. In its most recent resolution on this subject (1987/50), the Commission reiterated its previous calls for the full restoration of all human rights to the population of Cyprus, in particular to the refugees. It considered attempts to settle any part of Varosha by people other than its inhabitants as illegal and called for the immediate cessation of such activities. It also called for the tracing of and accounting for missing persons in Cyprus without any further delay and for the restoration and respect of human rights and fundamental freedoms of all Cypriots, including the freedom of movement, the freedom of settlement and the right to property.

3. Since assuming the functions of Secretary-General of the United Nations in January 1997, I have underlined to leaders of the Greek Cypriot and the Turkish Cypriot communities the importance of finding an early settlement of the Cyprus problem. In separate meetings in February and April, they expressed their readiness to make further efforts to reach a comprehensive solution.

4. In a communication of 17 April 1997 addressed to the President of the Security Council (S/1997/320), I stated my determination to pursue intensified efforts to bring about a comprehensive settlement of the Cyprus issue hoping it would be possible to convene direct talks between the leaders of the two communities. In the same communication, I informed the Council that I had decided to appoint Mr. Diego Cordovez, former Foreign Minister of Ecuador, as my new Special Adviser on Cyprus, with effect from 28 April, replacing Mr. Han Sung-Joo, who had served since May 1996.

5. In late April 1997, the permanent members of the Council reaffirmed their support for the good offices mission, as stressed in resolution 1092 (1996) of 23 December 1996, in which the Council gave its full support for the early convening, under the aegis of the United Nations, of direct negotiations between the leaders in order to secure an overall comprehensive settlement.

6. In a letter addressed to the President of the Council, dated 20 June 1997 (S/1997/480), I informed the Council of my intentions concerning my mission of good offices in Cyprus. On 9 June I wrote to the two leaders inviting them to a first session of face-to-face negotiations to take place in Troutbeck, New York, from 9-13 July. These face-to-face talks were to constitute the beginning of a process which should continue as long as may be needed to achieve agreement on a comprehensive solution. I envisaged that this first session would be followed by another in August and a third session, if necessary.

7. In order to avoid a perpetuation of the preceding inconclusive dialogues, I believe that there is a need for new approaches and procedures. Inasmuch as the elements needed to work out a settlement are at hand, I believe that a sustained process of direct negotiations leading to the conclusion of instruments that will constitute a comprehensive settlement is the most appropriate course of action.

8. A number of Governments, as well as the Commonwealth and the Presidency of the European Union, have appointed special envoys and representatives in support of the efforts carried out within the framework of my good offices mission. The active, firm and full support of all concerned, and particularly that of the Council, is indispensable if current efforts are to bring results.

9. As indicated in my report to the Security Council of 12 December 1997 (S/1997/973), I opened the first round of direct talks on 9 July, stating that for 29 years the leaders of the two communities had engaged in discussions about issues that had been identified as the most crucial. These discussions were based on concepts and approaches that successive Secretaries-General had put forward in accordance with Security Council resolutions. I stressed that the search for peace in Cyprus should therefore continue and noted that international backing for a negotiated solution was firmer than ever. The support of the Council had been consistently unequivocal and the presence at the talks of special envoys from a large number of countries was proof of the high priority that the international community attached to a viable and comprehensive solution.

10. The Troutbeck round of talks was held in a constructive and friendly atmosphere. The two leaders initiated the consideration of a draft statement intended to launch the process of negotiations that I had suggested, to set out the principles and objectives of the settlement and to establish the modalities for future negotiations.

11. The second round of talks was held at Glion-sur-Montreux, Switzerland, from 11 to 15 August. At the opening, the Turkish Cypriot leader informed my Special Adviser that, in the light of the publication by the European Commission of a document entitled "Agenda 2000", and pending the clarification of some of the statements contained in that document, he would participate in further discussions with the Greek Cypriot leader and with my Special Adviser, but would not be able to adopt any formal understandings or agreements. Two further versions of the draft statement were considered but the talks ended inconclusively. In the circumstances, an early third round of talks would have been unproductive.

12. I met again with the leaders of the two communities in New York on 6 October and 3 November, respectively. I urged them both to show their political will to reach a settlement. Upon an invitation extended at the Glion talks, my Special Adviser visited Nicosia from 18 to 21 November. There, he held consultations with both leaders and he also met with the leaders of political parties of the two communities. He subsequently visited Athens, Ankara and London, the capitals of the three Guarantor Powers, as well as Brussels. The message that I had asked him to convey on his visit was that I remained committed to continue my good offices mission at the earliest appropriate time.

13. During his consultations in Cyprus, my Special Adviser proposed, and the leaders of the two communities agreed, that he should return to Nicosia following the elections taking place in February 1998, in order to discuss the detailed modalities of a continuing process of negotiations.

14. The Turkish Cypriot leader raised with Mr. Cordovez questions regarding the status of the interlocutors at future talks. My Special Adviser noted that, in accordance with the mandate given to the Secretary-General by the Security Council, the mission of good offices on Cyprus was with the two communities, on an equal footing, and that the Secretary-General and all his representatives had been scrupulous in observing the political equality of the two communities and their leaders.

15. By resolution 1146 (1997) of 23 December 1997, the Security Council stressed its support for my mission of good offices and for the intention to resume in March 1998 the open-ended process of negotiations initiated in July 1997 and aimed at achieving a comprehensive settlement.

16. Pending a settlement, the United Nations Force in Cyprus (UNFICYP) has continued, under its mandate, to discharge humanitarian functions on behalf of the Greek Cypriots living in the northern part of the island, whose number stood at 477 in December 1997. UNFICYP officers have continued to interview Greek Cypriots, in private, who applied for "permanent transfer" to the southern part of the island in order to verify that the transfer was voluntary. UNFICYP has also continued to facilitate temporary visits by

Greek Cypriots from the Karpas area to the southern part of the island for family and other reasons. UNFICYP also continued to assist in arranging contacts between Maronites living on the island, 177 of whom reside in the northern part of the island, and to deliver to the north foodstuffs and other supplies provided by the Government of Cyprus. UNFICYP continued its periodic visits to Turkish Cypriots living in the southern part of the island and assisted in arranging family reunion visits for Turkish Cypriots. UNFICYP is aware of some 340 Turkish Cypriots living in the southern part of Cyprus. The Force continued to provide emergency medical evacuation of civilian members of both communities residing in the northern part of Cyprus.

17. UNFICYP continued its efforts to encourage contact and cooperation between the two communities and to building trust through actively promoting bicommunal events and activities. In this regard, UNFICYP worked closely with diplomatic missions in Cyprus. A significant number of bicommunal events were convened during 1997 organized by the United Nations, embassies of several interested Governments and non-governmental organizations.

18. On 19 April 1997, UNFICYP arranged for 437 Turkish Cypriots to make a pilgrimage to the Hala Sultan Tekke mosque in Larnaca without any restrictions being imposed by the Government. Unfortunately, a reciprocal pilgrimage by 600 Greek Cypriots to the church of Apostolos Andreas in the Karpas Peninsula, which was scheduled for Orthodox Easter on 27 April, was cancelled at the last moment by the Greek Cypriot side because the authorities in the north insisted on the deletion of three individuals from the list of participants. However, on 15 August, 674 Greek Cypriots were able to go on a pilgrimage to the monastery of Apostolos Andreas and another such pilgrimage took place on 30 November 1997 with some 1,200 Greek Cypriots participating.

19. On 8 August, 386 Turkish Cypriots were able to travel by road through the Government-controlled area to Kokkina to attend commemoration ceremonies and on 8 November some 274 Turkish Cypriots undertook a similar trip.

20. On 19 May, a bicommunal concert by two well-known singers from Greece and Turkey was held under the auspices of the United Nations at a soccer field in the buffer zone next to the Ledra Palace checkpoints. Some 3,000 Cypriots from both communities attended the concert, which took place in a completely positive and peaceful atmosphere. Greek Cypriots and Turkish Cypriots mixed readily, singing and dancing together and exchanging flowers and addresses. Police from both sides were particularly effective in providing security for the concert. The concert generated a great deal of debate about bicommunal contacts, which certain Greek Cypriot groups opposed because Turkish troops were still on the island. A demonstration on 19 May in Nicosia in protest against the bicommunal concert was organized by the Cyprus Motorcyclist Federation and the Pan-Cyprian Anti-occupation Movement and resulted in violent clashes with the police.

21. On 27 September, UNFICYP organized a bicommunal fair, in cooperation with various diplomatic missions, and some 3,900 persons from both Greek Cypriot and Turkish Cypriot communities attended. To celebrate United Nations Day, UNFICYP organized an Open House, which was attended by a total of over 4,000 persons from both communities. Other activities organized by UNFICYP included a bicommunal darts tournament in Bellapais in the northern part of

Cyprus and a bicommunal go-kart event in the United Nations Protected Area. A large number of bicommunal meetings were also held in the Ledra Palace Hotel, located in the buffer zone in Nicosia, under the auspices of UNFICYP and non-governmental and professional organizations representing a wide spectrum of disciplines and interests. The popularity of these activities continued to demonstrate the desire among the two communities to renew contacts in an unhindered manner. The media coverage of these events also generated a positive public discussion on the desirability and usefulness of bicommunal contacts.

22. Throughout 1997, the Turkish Cypriot authorities continued to insist that attendance by Turkish Cypriots at bicommunal events requires specific authorization in each case. For most of the year, such authorization was usually granted for events in the United Nations Buffer Zone and, though less consistently, for events in the southern part of the island. However, on 15 December following the European Union's Luxembourg Summit announcement that Turkey was not included in the list of countries being considered for accession, Turkish Cypriot authorities froze all bicommunal activities in Cyprus.

23. Demonstrations by Greek Cypriots continued to be staged at the South Ledra Checkpoint, mainly on weekends, with the aim of dissuading tourists from crossing to the north. In many instances, organized groups of schoolchildren in uniform participated in demonstrations. The demonstrations inconvenienced visitors and sometimes hindered the movement of UNFICYP and diplomatic personnel.

24. On 28 and 31 July, the leaders of the two communities met jointly with the Deputy Special Representative of the Secretary-General to discuss a number of humanitarian issues of common concern. In a statement issued on 31 July, the two leaders considered the problem of the Greek Cypriot and Turkish Cypriot missing persons in Cyprus as a purely humanitarian issue the solution of which was long overdue. They agreed that no political exploitation should be made by either side of the problem of the missing persons and they pledged to work for its solution in order to terminate the agony and the uncertainty of the families of the missing persons. As a first step in resolving the problem of the missing persons, they agreed to provide each other with all information already at their disposal on the location of graves of Greek Cypriot and Turkish Cypriot missing persons. They also each agreed to designate a person; these persons would meet to exchange this information and to prepare the necessary arrangements to lead to the return of the remains of these Greek Cypriot and Turkish Cypriot missing persons. On 30 September, the leader of the Greek Cypriot community informed the Deputy Special Representative that his side had completed its work and was ready to proceed as agreed on 31 July. At their 31 July meeting, the two leaders had also reached agreement on a number of other humanitarian issues, which have since been implemented.

25. On 23 January 1998, the Greek Cypriot and the Turkish Cypriot representatives met at the Ledra Palace in the presence of my Deputy Special Representative to exchange information on the location of graves of Greek Cypriot and Turkish Cypriot missing persons in pursuance to the 31 July 1997 agreement. They also indicated that their respective sides would continue

their efforts to obtain information on the location of graves of further missing persons. As this exchange constitutes evidence that progress is being made on the issue, I initiated the necessary steps leading to the appointment of a new Third Member of the Committee on Missing Persons.

26. As previously reported (E/CN.4/1997/48) and in line with operative paragraph 12 of Security Council resolution 1117 (1997), UNFICYP continued to monitor closely the living conditions of Greek Cypriots and Maronites living in the northern part of the island and Turkish Cypriots living in the southern part and to assess them against the recommendations of UNFICYP's Humanitarian Review set out in paragraphs 13-15 of E/CN.4/1997/48. The living conditions of Greek Cypriots and Maronites residing in the northern part of the island have changed little from those reported previously (see paragraphs 15-16 of E/CN.4/1996/54). With regard to the recommendations in the 1995 Humanitarian Review, the Turkish Cypriot authorities have made some improvements, notably by increasing the number of telephone lines in the Karpas and Kormakiti areas and by allowing UNFICYP humanitarian patrols to meet privately with Greek Cypriots in the Karpas area without the presence of police. Furthermore, the two vacant Greek Cypriot schoolteacher positions have now been filled in Rizokarpaso. The Government of Cyprus has implemented all the recommendations made by UNFICYP in the 1995 Humanitarian Review with regard to Turkish Cypriots living in the southern part of the island. Thus far, the Turkish Cypriots living in the south have made little use of the UNFICYP Liaison Office opened in December 1996 in Limassol.

27. Many of the restrictions on Greek Cypriots and Maronites living in the northern part of Cyprus that were noted in UNFICYP's 1995 Humanitarian Review remain. For example, travel within the northern part of Cyprus remains restricted for Greek Cypriots and they still cannot bequeath fixed property to their next of kin living outside of the northern part of Cyprus. The continuing policy of the Turkish Cypriot authorities is to consider property "abandoned or ownerless" whenever the Greek Cypriot or Maronite owner dies or permanently leaves the area. However, in February 1998, the Turkish Cypriot authorities announced new procedures and regulations for entry to and exit from the north. For Greek Cypriots and Greeks who wish to enter or depart, passports or identity documents are now required with a visa for which a fee of 15 pounds sterling is required. Turkish Cypriots or residents in the north requiring emergency medical treatment in the southern part of the island are exempt from the visa requirement. The period of stay allowed in the southern part of Cyprus for those who reside permanently in the north has been extended to six months, but they must carry a permit, passport or identity papers, and are required to pay a departure fee of 4 pounds sterling, as are tourists. A fee of 10 pounds sterling is levied for multiple departures. The age limitation for students studying in the southern part of the island was lifted for Greek Cypriot and Maronite girls and for Maronite boys, although Greek Cypriot boy students are still not allowed to return to their homes in the northern part of the island after they reach the age of 16. The students are required to pay a departure fee of 2 pounds sterling. The limitation on the number of persons allowed to visit the Monastery of Apostolos Andreas has also been lifted, provided that each visitor pays 15 pounds sterling for a visa and carries identity papers.

28. UNFICYP continued to maintain close liaison and cooperation with the military and civilian authorities on both sides. The liaison arrangements on the whole worked well. UNFICYP also continued to monitor the status quo in the fenced area of Varosha. Some buildings continue to be occupied by students. There were again cases of property being removed from buildings; UNFICYP protested these to the Turkish Forces. The United Nations holds the Government of Turkey responsible for the maintenance of the status quo in the fenced area of Varosha.

29. UNFICYP's movement in the northern part of the island continued to be restricted, notably in the Kormakiti area where United Nations personnel were refused access to certain areas and restricted in carrying out humanitarian tasks. On several occasions, humanitarian patrols were obstructed and vehicles searched. On one occasion the UNFICYP humanitarian officer in Sector 1 was arrested and held for several hours.

30. During the period under review, the Government of Cyprus protested that churches and other religious property in the northern part of Cyprus had been allowed to decay and that some had been vandalized and property had been removed. There is also concern about damage to graveyards. UNFICYP pursued the matter with the Turkish Cypriot authorities.

31. Until the end of 1997, UNFICYP continued to cooperate with the Office of the United Nations High Commissioner for Refugees (UNHCR), as coordinator of United Nations humanitarian assistance to needy displaced persons in Cyprus and in bicommunal cooperation in a variety of areas. The Force also maintained close cooperation and liaison with the respective police authorities on matters with intercommunal aspects.

32. Since 16 June 1993, the financing of UNFICYP has consisted of voluntary contributions of $6.5 million annually from the Government of Greece and one third of the cost of the Force from the Government of Cyprus, with the remaining amount assessed on Member States. The estimated cost of maintaining the Force for six months is approximately $24 million, with approximately $14.5 million of that amount assessed on Member States.

33. The activities of UNFICYP, including those relating to its humanitarian responsibilities, are described in the Secretary-General's most recent reports to the Security Council on the operation in Cyprus (S/1997/437 and Add.1 and Corr.1 and S/1997/962 and Add.1). A full account of the Secretary-General's efforts on his mission of good offices in Cyprus is contained in a letter addressed to the President of the Security Council and in a report to the Security Council (S/1997/480 and S/1997/973).